

IN THE MATTER OF THE  
THE APPLICATION OF  
RICHARD H. SCHLOTTMAN, ET UX  
FOR A SPECIAL EXCEPTION ON  
PROPERTY LOCATED ON THE EAST  
SIDE MCDONOGH ROAD, 400 FEET  
SOUTH OF THE CENTERLINE OF  
SELINA/LESAN ROADS  
(3949 MCDONOGH ROAD)  
2ND ELECTION DISTRICT  
2ND COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 95-274-X  
\*

\* \* \* \* \*

### O P I N I O N

This case comes before the Board by way of an appeal from a decision of the Zoning Commissioner relative to a request made by the Appellant to operate a physician's office in a primary residence in a D.R. 5.5 zone. On March 13, 1995, the Zoning Commissioner denied the Appellant's Petition for Special Exception. This Board heard the case on a de novo basis. Newton A. Williams, Esquire, appeared as Counsel for the Appellant /Petitioner. Peter Max Zimmerman, People's Counsel for Baltimore County, also participated in the proceedings.

Dr. Richard Schlottman, Appellant /Petitioner, testified at the hearing. He indicated that he had lived at the subject property located at 3949 McDonogh Road for 6-1/2 years. He is licensed by the State of Maryland to practice medicine, and he currently specializes in family practice on a limited basis. His full-time position is in the capacity of a physician at the Clifton T. Perkins facility in Jessup, Maryland, which consumes 35 hours a week. He testified that the time element involved in his present part-time family practice was limited to approximately 12 hours a week. He further testified that he previously had an office

located at Old Court Road in the Signet Bank building, but had decided to relocate to his primary residence because of a family crisis that required his assistance with the raising of his two young children. His wife had apparently been hospitalized for some time. At the house, he saw patients by appointment only, and no more than ten a day. Hours were from 9:00 a.m. to 11:00 a.m. on Wednesday, Thursday, Friday, and Saturday, and also Monday evenings from 6:00 p.m. to 8:00 p.m. Blood work was performed on the premises two days a week. Less than 25 percent of the total floor space in the house was allocated to the limited medical practice. At the time he relocated the practice to his home, he was unaware that a special exception was required by Baltimore County law. The Appellant testified that, since the time of the Zoning Commissioner's decision, he had secured permission from a next-door neighbor at 3947 McDonogh Road, Ms. Shew Der, to use her driveway for additional parking. He also testified that he parks his car in the rear of the subject property. His driveway is capable of holding at least five cars parked in tier fashion without obtruding into the street. With Mrs. Der's extra space available, two other off-street sites would now be available for his patients, and additional curb-side parking is permitted in the 3900 block McDonogh Road without restrictions. It was his belief that such a limited usage would be an asset to the community, and that, if the Board desired to impose any restrictions, he would work within such restrictions to continue the limited medical usage in his home.

Ms. May Ling Der Russell also testified on behalf of the

Appellant's request for the special exception. Ms. Russell has lived on Brenbrook Road for 10 years which is very close in proximity to the Appellant's house, and she has known the Appellant for 15 years. Her mother is 91 years of age and lives next-door to the Appellant at 3947 McDonogh Road. Her mother does not drive, and cars are not normally parked in her mother's driveway, except for occasional visits by her brother. She further testified that, by letter dated April 30, 1995, her mother had given the Appellant permission to use the driveway located at 3947 McDonogh Road for patient visits. She saw no disadvantages in having the special exception granted.

Ms. Elaine Hyatt testified against the granting of the special exception. She lives directly across the street from the Appellant at 3946 McDonogh Road, and has resided there for 24 years. She testified concerning what she felt was heavy traffic on McDonogh Road, and conditions on McDonogh Road and Brenbrook Road which created problems for traffic on McDonogh Road, and the special exception if granted would simply exacerbate the problem. She indicated that at night the problem was particularly bad because of a curve in the street and a "blind" spot. Additionally, some of the doctor's patients had been observed making dangerous "U" turns. She also testified concerning what she perceived to be parking problems created by the doctor's office, and a concern that the granting of the special exception would cause other requests being made in the residential community.

Mr. Robert Piesto also testified against the special

Baltimore County Zoning Regulations (BCZR), and subsequent additions thereto, home medical practices were permitted as a matter of right. The County Council, by Bill No. 105-82, granted such home medical practices by special exception (including other "professional persons, such as dentists, lawyers..."). The County Council did, however, set a limitation that such home practices could not take up more than 25 percent of the total floor space, with only two professional and two support personnel allowed on the premises. The Appellant's space usage is well within that permitted by legislation in a D.R. 5.5 zone. The Board, in reaching its decision, is convinced that the proposed use would not be detrimental to the primary uses in the area, and would not adversely affect the public interest, based upon the testimony and evidence produced; and, further, that the proposed use meets the prescribed standards and requirements established by Section 502.1 of the BCZR. The Board, in reaching its decision, is guided by Maryland case law. A special exception is a use which has been legislatively pre-determined to be conditionally compatible with the uses permitted as a matter of right in a particular zone, the condition being that a zoning board must, in each case, decide under specific statutory standards whether presumptive compatibility exists. The duty given to the Board is to judge whether "there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its

location within the zone." Holbrook, 314 Md. at 217.

The Board finds that the Petitioner has met the burden of adducing testimony and evidence of a substantive nature that the prescribed standards and requirements of Section 502.1 of the BCZR have been met, and that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect public interests. Additionally, the facts and circumstances do not reflect that the proposed use at the particular location would have any adverse impact above and beyond that inherently associated with a special exception use irrespective of its location within the zone. People's Counsel for Baltimore County v. Mangione, 85 Md.App. 738 (1991). Further, the Board finds that the proposed use would not be detrimental to the health, safety or general welfare of the area, nor tend to create congestion in roads, streets or alleys, nor be inconsistent with the purpose of the property's zoning classification or inconsistent with the spirit and intent of the BCZR.

O R D E R

THEREFORE, IT IS this 7th day of November, 1995 by the County Board of Appeals for Baltimore County

ORDERED that the Appellant /Petitioner be GRANTED a special exception for a limited home medical office on the subject property pursuant to Section 502.1 of the BCZR, subject to the following restrictions:

1. The number of patients permitted by appointment only shall be limited to a maximum of eight per day.
2. Hours of operation shall be limited to 9:00 a.m. to 11:00 a.m. on Wednesday, Thursday, Friday and Saturday.

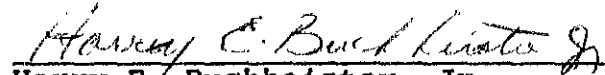
3. No evening hours shall be permitted.
4. Signs shall be conspicuously posted in Petitioner's office advising patients to park in the Petitioner's driveway or that of the neighbor's house located at 3947 McDonogh Road.
5. The special exception shall continue only as long as the Petitioner enjoys the right of parking privileges granted by the owner of 3947 McDonogh Road.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY



Charles L. Marks



Harry E. Buchheister, Jr.

IN THE MATTER OF THE  
THE APPLICATION OF  
RICHARD H. SCHLOTTMAN, ET UX  
FOR A SPECIAL EXCEPTION ON  
PROPERTY LOCATED ON THE EAST  
SIDE MCDONOGH ROAD, 400 FEET  
SOUTH OF THE CENTERLINE OF  
SELINA/LESAN ROADS  
(3949 MCDONOGH ROAD)  
2ND ELECTION DISTRICT  
2ND COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 95-274-X  
\*

\* \* \* \* \*

DISSENTING OPINION

This is to express my dissent from the majority opinion in which this Board acted to approve a special exception for a physician's office in a D.R. zone. My position is that the Board is not charged with the responsibility to determine whether the proposed use is a proper use in the given zone; only to determine whether special conditions exist which would lead one to conclude that those conditions, in light of the proposed use, impart an effect on the surrounding area which is greater than what might ordinarily be imparted by the same use anywhere else in the zone.

I find that the location of the Petitioner's property is situated such that visibility along a heavily travelled arterial makes for an extremely unsafe condition. The number of trips generated by the proposed use is not at issue; the manner in which those trips enter and exit the traffic is precisely the issue which I deem to be above what one would expect for the same use in other locations within the zone. The Appellee argues that a dental office nearby can be equated to the proposed use. I find that the dental facility has very adequate parking and ease of entry into the traffic stream, where the proposed facility does not.

I also find that the Petitioner is not able to use an unrecorded agreement with an adjacent property owner for parking to be the basis of satisfying parking requirements in support of the special exception. During the proceedings, we heard that the occupant of the adjacent property is a 91-year-old woman who is immobile, and does not mind the use of her driveway by the Petitioner's patients. However, no written agreement is recorded. The assumption must be that, upon transfer of title of the adjacent property owner's property, any verbal authorization to use that property's parking area would be nullified and, given the testimony of Ms. Elaine Gray of Dr. Schlottman's office that the practice is growing with its increased demand due to HMO contracts, that a parking problem would be exacerbated by such ending of the parking agreement. While it is true that such an agreement or lack thereof may exist elsewhere in the D.R. zone, again the location along this particular stretch of a major County arterial and the poor sight lines for northbound traffic from Brenbrook Road only serves to exacerbate that condition.

In my finding of those facts, I would have denied the Petition for Special Exception.

  
\_\_\_\_\_  
Robert O. Schuetz  
County Board of Appeals

Date: November 7, 1995





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

November 7, 1995

Newton A. Williams, Esquire  
NOLAN, PLUMHOFF & WILLIAMS, CHTD.  
Suite 700, Court Towers  
210 W. Pennsylvania Avenue  
Towson, MD 21204-5340

RE: Case No. 95-274-X  
Richard H. Schlottman, et ux

Dear Mr. Williams:

Enclosed please find a copy of the majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Dissenting Opinion of Mr. Schuetz.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

*Charlotte E. Reelchiff* for  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Dr. Richard H. Schlottman  
Ms. Elaine Hyatt  
Mr. Robert Piesto  
People's Counsel for Baltimore County  
Pat Keller, Planning Director  
Lawrence S. Schmidt  
W. Carl Richards, Jr. /PDM  
Docket Clerk /PDM  
Arnold Jablon, Director /PDM  
Virginia W. Barnhart, County Attorney

RICHARD SCHLOTTMAN, et ux                   \*           BEFORE THE  
3949 McDonogh Road                       \*  
Randallstown, Maryland 21133           \*           COUNTY BOARD OF APPEALS  
  
                  Petitioner                       \*           OF BALTIMORE COUNTY

\*       \*       \*       \*       \*       \*       \*       \*       \*       \*

PETITIONER'S HEARING MEMORANDUM

Richard Schlottman, M.D., by Newton A. Williams and Nolan, Plumhoff and Williams offers this Hearing Memorandum for the consideration of the Board.

Background and Nature of Request

Dr. Richard Schlottman is a licensed physician, who grew up in Baltimore County. He and his family have resided at 3949 McDonogh Road for approximately ten years. Dr. Schlottman is asking for a special exception to conduct a part-time, limited medical practice from his home. In addition to this part-time practice, he is employed as a physician at the Clifton T. Perkins Facility in Jessup, Maryland.

As is shown on the Petitioner's Exhibit 1, the plat prepared by Dr. Schlottman, the subject property is a D.R.5.5 lot located on the east side of McDonogh Road in the 3900 block, between Brenbrook to the south and Wynands Road to the north.

Dr. Schlottman resides at this location as his primary residence. He uses a small portion of the downstairs, namely the living room and dining room and a den for offices, an examining room and a small laboratory.

Dr. Schlottman's driveway is quite wide, and is capable of accommodating at least five cars, parked in three tiers, without intruding into the street. Curbside parking is allowed in the 3900 block of McDonogh Road without restriction. Furthermore, McDonogh Road at this site is quite wide.

Since the time of the Zoning Commissioner's hearing during the winter of 1994, Dr. Schlottman has obtained permission from the adjoining property owned by the Der family, known as 3947 McDonogh Road, to park an additional two vehicles off the street.

Dr. Schlottman describes his practice as a "family oriented" practice, that is a general practice. Due to family considerations, approximately a year ago, Dr. Schlottman moved his part time medical practice to his home in the belief that such use was allowed.

The hours and days of operation are very limited, namely Monday evening from approximately 5:00 - 8:00 p.m., and Wednesday, Thursday, Friday and Saturday from 9:00 in the morning until 11:00 a.m. The doctor sees people only by appointment, and he will see between six and ten patients on any given day.

Patients are instructed not to park on the street, or in front of other persons houses, but to pull up in the driveway area in front of the house.

Dr. Schlottman employs only one employee, who serves as an office manager and billing manager, and she is on site from approximately 8:00 in the morning until 2:00 p.m. in the afternoon, five days per week. The doctor does not have any nursing staff, or any other physician or physicians aiding him or using this office. Furthermore, the doctor is not asking permission for others to use this office or for it to be expanded to the full level allowed, namely two doctors and two assisting personnel.

The Proposed Limited Home Medical  
Practice and Applicable Law

For many years under the 1955 Baltimore County Zoning Regulations, and subsequent editions thereof, home medical practices were allowed as a matter of right.

By Bill No. 105-82, such home medical practices were made a special exception in the various DR zones. Furthermore, the category is fairly broad allowing "physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons." There is a requirement that the medical or professional offices cannot take up more than 25 percent of the total floor space, and two professionals and two support personnel are allowed.

It is obvious that the scope of the operation requested by Dr. Schlottman is far less intensive than that potentially allowed by the County Council.

The Board is very familiar, we are sure, with the leading Maryland special exception case Schultz v. Pritts, 291 Md. 1 (1981).

In Schultz, at page 15, the Court of Appeals said:

"The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses."

Thus, the request by Dr. Schlottman has a presumption in its favor that the allowance of home medical practices by special exception serves the general welfare. It can be readily appreciated that a physicians office in a neighborhood close to the patients involved, and convenient to them, does serve the public welfare.

By the Council allowing such special exceptions in all of the D.R. zones, the Council certainly anticipated the normal side effects of such medical practices, including persons going to and from the house, and the need to park in order to visit the doctor. Surely, if the Council felt that two practitioners, and two support personnel could be allowed, the Council obviously contemplated considerably more parking and more intensive activity than the very limited medical practice and limited on site parking proposed by Dr. Schlottman.

In denying the original special exception, Commissioner Schmidt was very indefinite about the reasons for the denial, other than the limited parking available.

Since that time, Dr. Schlottman has obtained permission from the adjoining property owner to use that driveway as well, at 3947, and, thus, at least seven cars can be accommodated off the street.

The Proposed Limited Medical Practice and Section 502.1

Dr. Schlottman would respectfully submit that his limited proposal meets the various requirements of Section 502.1 as follows:

a. As to "health, safety and general welfare", it is obvious that a physicians office fosters the health, safety and general welfare of the locality involved by providing safe, nearby and convenient medical facilities.

b. As to "congestion of roads, streets or alleys", the doctor limits his practice to those hours of the day namely 9:00 to 11:00 and 5:00 to 8:00 when the roads are less busy. Furthermore, he has provided additional parking, and can accommodate seven cars.

c. As for a potential hazard from fire, panic or other dangers, no such claim has been made.

d. The existing house will not be enlarged, and thus, we are not "overcrowding land or causing undue concentration of population."

e. There were no negative comments at the zoning commissioner level from any County departments regarding public requirements.

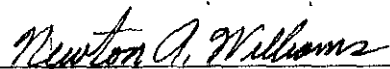
f. As for "adequate light and air", the existing house meets all residential setbacks and height requirements.

g. As for the purposes of the property zoning classification, people need medical offices and dental offices in the D.R.5.5 zones as much as any other zone, and the Council did not specify that it would not be allowed on smaller lots.

h. It would not be inconsistent with the impermeable surface and vegetative retention provisions, since only the existing driveway and parking pad would be used at the two residences, and it can be seen in the photographs there is extensive screening and planting on both properties.

#### Conclusion

For all of these reasons, we respectfully ask that the Board allow Dr. Schlottman to have a very limited medical practice in his home as requested in this case.

  
Newton A. Williams  
NOLAN, PLUMHOFF & WILLIAMS, CHTD  
Suite 700, Court Towers  
210 West Pennsylvania Avenue  
Towson, Maryland 21204  
(410) 823-7800

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>th</sup> day of September, 1995, a copy of the foregoing Petitioner's Hearing Memorandum was mailed, postage prepaid, to Peter Max Zimmerman, Esquire and Carole S. DeMilio, People's Council for Baltimore County, Room 47, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.

Newton A. Williams  
Newton A. Williams

0138D



IN RE: PETITION FOR SPECIAL EXCEPTION \* BEFORE THE  
E/S McDonogh Road, 400 ft. S  
of c/l Selina/Lesan Rd. \* ZONING COMMISSIONER  
3949 McDonogh Road \* OF BALTIMORE COUNTY  
2nd Election District \*  
2nd Councilmanic District \*  
Richard H. Schlottman, et ux \* Case No. 95-274-X  
Petitioners \*

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception for the property located at 3949 McDonogh Road in Randallstown. The Petition is filed by Richard H. Schlottman, M.D. and Patricia A. Schlottman, his wife, property owners. Special exception relief is requested to permit an office of a professional person (physician) in a primary residence located in a D.R.5.5 zone. The subject property and requested relief are more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition.

Appearing at the public hearing held for this case was Dr. Richard H. Schlottman, co-Petitioner/property owner. Dr. Schlottman was not represented by counsel, nor did he produce either an engineer/surveyor or other expert witness. Two neighboring property owners, Elaine Hyatt and Robert Piesto, appeared as Protestants.

Testimony and evidence presented by Dr. Schlottman was that he has owned the subject property for approximately six years. This is a relatively small lot (6,409 sq. ft.) and is zoned D.R.5.5. As noted above, the site is located on McDonogh Road in Randallstown. The property is improved by a two story single family dwelling and driveway. It is located within a residential locale.

Dr. Schlottman indicates that he is employed on a full time basis by the State of Maryland. Presently, he is working on a project which relates

ORDERED FOR FILING  
DATE 3/13/95  
BY M. J. [Signature]

to a study of State hospitals. He indicated that he is separated from his wife and resides on the subject property with his two children and a housekeeper. Apparently, he has custody of these children, who are minors.

Notwithstanding his full time employment with the State, he wishes to practice medicine from the subject site on a part time basis. In fact, he has opened his practice on the property and has conducted same at that location for approximately one year. He testified that he was unaware of the zoning regulations and did not know that a special exception was required in order to operate his medical practice at that location. The practice operates four days a week, from Wednesday through Saturday. The hours of operation are from 9:00 A.M. to 12:00 noon. He normally sees approximately seven patients per day or 25 to 30 patients per week.

Dr. Schlottman employs one person on site as part of the medical practice. This person doubles as a receptionist and office manager. Moreover, two days a week, an individual from a laboratory contracted by Dr. Schlottman is on site to take blood and do blood tests.

Dr. Schlottman presented a site plan for the subject property which shows the property and dwelling (Petitioner's Exhibit No. 1) He also presented a floor plan which shows that approximately 630 sq. ft. of the dwelling would be utilized for his office (Petitioner's Exhibit No. 2). The house totals 4860 sq. ft. in area. Photographs and a depiction of the parking area were also shown. Parking is to be accomplished by stacking automobiles on the driveway which is located on site. There is room for five motor vehicles. However, they would be stacked if all five spaces were utilized at a given time.

The neighbors who appeared indicated that they are primarily concerned over the parking/traffic issues. Both neighbors indicated that they had no real objection to the doctor's office being located at the site but were

3/13/95  
In State

concerned over the traffic congestion and overflow parking. Parking is permitted on McDonogh Road and both Ms. Hyatt and Mr. Piesto testified that Dr. Schlottman's patients frequently park in front of their homes.

In considering the Petition for Special Exception, it is to be noted that same may be granted only if the conditions set forth in Section 502.1 of the BCZR are satisfied. The grant is not by plebiscite and whether the community favors such a project. Rather, the Petitioner must satisfactorily prove that the operation of the special exception use (ie., medical office) satisfies the criteria contained in Section 502.1 of the BCZR and is not detrimental to the health, safety and general welfare of the locale.

Based upon the testimony and evidence presented, I am not persuaded that the Petitioner has satisfied this burden. I am frankly surprised that more neighbors did not appear to protest the proposed use. The lot is clearly quite small and not suitable for an office use. Of particular concern is the parking arrangement. Dr. Schlottman testified that he owns two cars (one for his use and one for his housekeeper) and his receptionist/office manager drives to work. When the lab technician is also present, four cars will be on the premises. This does not count any vehicles driven by patients. The proposed parking arrangement is not acceptable. Each vehicle should have unimpeded access in and out of the site and if all five parking spaces are utilized, three of the vehicles will be blocked in. Parking on the street is also not an acceptable alternative in view of the high volume of traffic on McDonogh Road and the residential character of the area. For all of these reasons, I believe that the proposed office use is not appropriate at this location and that the Petition for Special Exception should be denied.


ORDER RECORDED FOR FILING

3/13/95  
By: M. D. D. D.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 13<sup>th</sup> day of March, 1995 that, pursuant to the Petition for Special Exception, approval for an office of a professional person (physician) in a primary residence, located in a D.R.5.5 zone, be and is hereby DENIED.

1. The Petitioner shall cease and desist his part time medical practice from the subject property (3949 McDonogh Road) within 90 days from the date of this Order.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmm

ORDER RECEIVED FOR FILING  
DATE 3/13/95  
BY M. Good

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 112 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

March 10, 1995

Dr. Richard H. Schlottman  
3949 McDonogh Road  
Randallstown, Maryland 21133

RE: Petition for Special Exception  
Case No. 95-274-X  
Property: 3949 McDonogh Road

Dear Dr. Schlottman:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Exception has been denied in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

Lawrence E. Schmidt  
Zoning Commissioner

LES:mmn

att.

cc: Ms. Elaine Hyatt  
cc: Mr. Robert Piesto



272



# Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at

3949 McDonough Rd Randallstown, MD 21133

which is presently zoned

BR 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

AN OFFICE OF A PROFESSIONAL PERSON (IE: A PART TIME MEDICAL OFFICE IN THE PRIMARY RESIDENCE).

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

(We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

Phone No.

City

State

Zipcode

Legal Owner(s):

Richard H. Schlottman

(Type or Print Name)

Richard H. Schlottman

Signature

Patricia A. Schlottman

(Type or Print Name)

Patricia A. Schlottman

Signature

3949 McDonough Rd 655-8868

Address

Phone No.

Randallstown MD 21133

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

Name

Address

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE



Richard and Patricia Schlottman ZONING DESCRIPTION

95-274-X

Zoning Description for 3949 McDonogh Road, Randallstown,  
Maryland  
Election District 12 Councilmanic District 2

Beginning at a point on the East side of McDonogh Road  
which is 60 feet wide at a distance of 400 feet south of  
the centerline of the nearest improved intersecting street  
Selina Rd./Lesan Rd. which is 60 feet wide.

Being Lot # 2, Block D, Section 6 in the subdivision  
of Plat #2, Century 21 at Randallstown as recorded in  
Baltimore County Plat Book # 36,  
Folio # 5, containing apx. 6.409 square feet.

272

**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
**Towson, Maryland**

95-274-X

District: 2nd Date of Posting: 7/17/95  
Posted for: Special Exception  
Petitioner: Richard & Patricia Schlotzman  
Location of property: 3849 McDonough Rd, E/S  
Location of Signs: Facing road on property to be signed  
Remarks: \_\_\_\_\_  
Posted by: M. Shabo Date of return: 7/24/95  
Signature  
Number of Signs: 1





# NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #95-274-X  
(Item 272)

3949 McDonogh Road  
E/S McDonogh Road, 400'  
S of Selina/Lesau Road  
2nd Election District  
2nd Councilmanic

Legal Owners:

Richard H. Schlottman  
and Patricia Schlottman  
Hearing: Monday,  
March 6, 1995 at 10:00  
a.m. in Rm. 118, Old  
Courthouse.

Special Exception for an office of a professional person (i.e., a part-time medical office in the primary residence).

LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.

2/19/91 February 16.

# CERTIFICATE OF PUBLICATION

TOWSON, MD.,

2/16, 1995

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2/16, 1995

THE JEFFERSONIAN,

A. Henickson

LEGAL AD. - TOWSON



Baltimore County  
Zoning Administration &  
Development Management  
141 West Chesapeake Avenue  
Towson, Maryland 21201

receipt

95-274-X

Account: R-001-6150

Number 272

By JLL

Date

2/2/95

1 SPX FILING CODE 050 - \$300.00

1 SIGN POSTING CODE 080 - 35.00

\$335.00

SIGNATURE

3349 Mc DONOUGH RD.

Please Make Checks Payable To: Baltimore County

Cashier Validation

**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
**Towson, Maryland**

93-274-X

District 2nd

Date of Posting 4/14/95

Posted for: Appeal

Petitioner: Richard H. Schlottman

Location of property: E/S McDonough Rd, 3949

Location of Signs: Facing road way on property being appealed

Remarks: \_\_\_\_\_

Posted by

M. Italy  
Signature

Date of return:

4/21/95

Number of Signs: 1



BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 58618

DATE April 10, 1995 ACCOUNT R-001-6150

AMOUNT \$ 285.00

RECEIVED Patricia A. Schlottman  
FROM: Richard H. Schlottman, III, MD

FOR: Appeal 95-274-X  
3949 McDonogh Road

DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 156328

DATE 2/22/95 ACCOUNT R-001-6150

AMOUNT \$ 335.00

RECEIVED Patricia Schlottman  
FROM:

FOR: Special Exception 95-274-X

DISTRIBUTION

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 156329

DATE 2/22/95 ACCOUNT 001-006-3060

AMOUNT \$ 25.00

RECEIVED Patricia Schlottman  
FROM:

FOR: Returned Check Fee

DISTRIBUTION  
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

# GENERAL JOURNAL VOUCHER

## MALTIMORE COUNTY, MARYLAND

DOC ID J V 0 0 6 J E 0 2 - 1 3 7

JV DATE	0	2	1	6	9	5
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ACCTG PRD

COMMENTS (12) | B | A | D | | C | H | E | C | K | S | |

EXPLANATION: To  
reverse monies due to  
Returned Checks

BUDGET FY 

--	--

REVERSAL DATE					
------------------	--	--	--	--	--

31	001-006-6150	335.00	Patricia Schlottman	ZADM
31	001-006-6161	25.00	Christajake Floors	ALT Sent


31 001-006-6161 25.00 Christajake Floors ALT Sent

[illegible][illegible]

**DOCUMENT TOTAL**

360.00

336.00

KMC			
PREPARED	VERIFIED	APPROVED	ENTERED

DOC ID J E O 2 - 1 3 7



RECEIVED

FEB 17 1995

ZADM

PATRICIA A. SCHLOTTMAN 8-92  
RICHARD H. SCHLOTTMAN III, M.D.  
PH. 410-855-8888  
3949 McDONOGH RD.  
RANDALLSTOWN, MD 21133

1092

7-61/620  
8

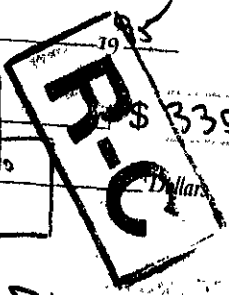
Pay to the order of

*Bellman*

NOT SUFFICIENT

*Three Hundred*

NOT SUFFICIENT



\$ 335.00

Dollars



MERCANTILE BANK OF MARYLAND  
DEPOSIT & TRUST COMPANY  
8230 LIBERTY ROAD  
BALTIMORE, MARYLAND 21244

FUNDS

For *Mon* 272

*Richard H. Schlottman III*

⑆052000618⑆ 1092000434074

⑆0000033500⑆

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

**PAYMENT WILL BE MADE AS FOLLOWS:**

- 1) Posting fees will be assessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

A handwritten signature in cursive script, reading "Arnold Jablon".

ARNOLD JABLON, DIRECTOR

-----  
For newspaper advertising:

Item No.: 272

Petitioner: Richard H. Schlotman

Location: 3949 McDonogh Rd. Randallstown MD 21133

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Richard H. Schlotman

ADDRESS: 3949 McDonogh Rd  
Randallstown MD 21133

PHONE NUMBER: 521-3188



TO: PUTUXENT PUBLISHING COMPANY  
Feb. 16, 1995 Issue - Jeffersonian

Please forward billing to:

Richard Schlottman  
3949 McDonogh Road  
Randallstown, MD 21133  
410-512-3188

---

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in  
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204  
or  
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-274-X (Item 272)  
3949 McDonogh Road  
E/S McDonogh Road, 400' S of Selina/Lesan Road  
2nd Election District - 2nd Councilmanic  
Legal Owners: Richard H. Schlottman and Patricia Schlottman  
HEARING: MONDAY, MARCH 6, 1995 at 10:00 a.m. in Room 118, Old Courthouse

Special Exception for an office of a professional person (i.e., a part-time medical office in the primary residence).

LAWRENCE E. SCHMIDT  
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

FEBRUARY 9, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-274-X (Item 272)

3949 McDonogh Road

E/S McDonogh Road, 400' S of Selina/Lesan Road

2nd Election District - 2nd Councilmanic

Legal Owners: Richard H. Schlottman and Patricia Schlottman

HEARING: MONDAY, MARCH 6, 1995 at 10:00 a.m. in Room 118, Old Courthouse

Special Exception for an office of a professional person (i.e., a part-time medical office in the primary residence).

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon  
Director

cc: Richard and Patricia Schlottman

- NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room - Room 48  
Old Courthouse, 400 Washington Avenue

May 30, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 95-274-X

RICHARD SCHLOTTMAN, ET UX -Petitioner  
E/s McDonogh Road, 400' S of the c/l  
Selina/Lesan Roads (3049 McDonogh Road)  
2nd E; 2nd C

SE -Physician's office in primary residence in  
D.R. 5.5 zone.

3/13/95 -Z.C.'s Order in which Petition for  
Special Exception was DENIED.

ASSIGNED FOR

WEDNESDAY, SEPTEMBER 6, 1995 at 10:00 a.m.

cc: Richard H. Schlottman, M.D.

Appellant /Petitioner

Elaine Hyatt  
Robert Piesto

Protestant  
Protestant

People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Virginia W. Barnhart, County Attorney

Kathleen C. Weidenhammer  
Administrative Assistant





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room - Room 48  
Old Courthouse, 400 Washington Avenue

June 9, 1995

NOTICE OF POSTPONEMENT & REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 95-274-X

RICHARD SCHLOTTMAN, ET UX -Petitioner  
E/s McDonogh Road, 400' S of the c/l  
Selina/Lesan Roads (3049 McDonogh Road)  
2nd E; 2nd C

SE -Physician's office in primary residence in  
D.R. 5.5 zone.

3/13/95 -Z.C.'s Order in which Petition for  
Special Exception was DENIED.

which was scheduled for hearing on September 6, 1995 has been POSTPONED at the request of Counsel for Appellant /Petitioner due to Court of Special Appeals conflict; and has been

REASSIGNED FOR

WEDNESDAY, SEPTEMBER 27, 1995 at 10:00 a.m.

cc: Newton A. Williams, Esquire Counsel for Appellant/Petitioner  
Richard H. Schlottman, M.D. Appellant /Petitioner

Elaine Hyatt  
Robert Piesto

Protestant  
Protestant

People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Virginia W. Barnhart, County Attorney

Kathleen C. Weidenhammer  
Administrative Assistant



CASE NO. 95-274-X

RICHARD H. SCHLOTTMAN, ET UX - Petitioners

E/S McDonogh Road, 400 ft. S of the c/l  
of Selinā/Lesan Roads  
(3949 McDonogh Road)

2nd Election District

Appealed: 4/5/95

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

February 27, 1995

Mr. and Mrs. Richard Schlottman  
3949 McDonogh Road  
Randallstown, Maryland 21133

RE: Item No.: 272  
Case No.: 95-274-X  
Petitioner: Mr. & Mrs. Schlottman

Dear Mr. and Mrs. Schlottman:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approving agencies, has reviewed the plans submitted with the above referenced petition. Said petition was accepted for processing by, the Office of Zoning Administration and Development Management (ZADM), Development Control Section on February 2, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties; i.e., zoning commissioner, attorney, petitioner, etc. are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.  
Zoning Supervisor

WCR/jw  
Attachment(s)



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration &  
Development Management

FROM: Pat Keller, Director  
Office of Planning and Zoning

DATE: February 22, 1995

SUBJECT: 3949 McDonogh Rd.

INFORMATION:

Item Number: 272

Petitioner: Schlottman Property

Property Size: 6409 sq. ft.

Zoning: DR-5.5

Requested Action: Special Exception

Hearing Date:       /      /      

SUMMARY OF RECOMMENDATIONS:

The plan accompanying the special exception is incomplete and provides no useful information from which to review issues related to the provision of parking, screening and landscaping.

These issues aside, however, staff notes the site is situated in the middle of the community of Century 21 at Randallstown, along McDonogh Road which is improved with well maintained, single-family detached dwellings on both sides of the street.

The property is located in a neighborhood designated as a Community Conservation Area in the 1989-2000 Master Plan. Relative to this request the Plan indicates, "Proposals encouraging extra traffic harmful to the community should be avoided." Generally, the introduction of non-residential traffic into an existing community results in a negative impact. However, due to the lack of information contained within this filing, it is impossible to determine possible trip generation from this site.

Based upon a review of the information provided and analysis conducted, the staff recommends that the applicant's request be denied for the following reasons:

- the use could tend to destabilize the community
- the use could encourage other similar conversions in the community
- the applicant has not indicated how the impact of this use on adjacent property will be mitigated.

Prepared by:

Jeffrey W. Long

Division Chief:

Gary L. Kerns

PK/JL



Baltimore County Government  
Fire Department



700 East Joppa Road Suite 901  
Towson, MD 21286-5500

(410) 887-4500

DATE: 02/16/95

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: RICHARD H. SCHLOTTMAN & PATRICIA SCHLOTTMAN

LOCATION: E/S McDONOUGH RD., 400' S OF SELINA/LESAH RD.  
(3949 McDONOUGH RD.)

Item No.: 272

Zoning Agenda: SPECIAL EXCEPTION

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

**RECEIVED**  
FEB 21 1995  
**ZADM**

REVIEWER: LT. ROBERT P. SAUERWALD  
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



BAITIMORE COUNTY, MARYLAND  
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director      DATE: Feb. 21, 1995  
Zoning Administration and Development Management

FROM: *RWB* Robert W. Bowling, P.E., Chief  
Developers Engineering Section

RE: Zoning Advisory Committee Meeting  
for February 21, 1995  
Item No. 272

The Developers Engineering Section has reviewed the subject zoning item. Adequate onsite parking should be provided.

RWB:sw

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT  
INTER-OFFICE CORRESPONDENCE

TO: ZADM  
FROM: DEPRM  
Development Coordination  
SUBJECT: Zoning Advisory Committee  
Agenda: FEB. 13, 1995

DATE: FEB. 14, 1995

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: 264  
267  
268  
271  
272  
273

*N. Bruce Seely*  
2-14-95

LS:sp

LETTY2/DEPRM/TXTSBP





**Maryland Department of Transportation  
State Highway Administration**

O. James Lighthizer  
Secretary  
Hal Kassoff  
Administrator

2-10-95

Ms. Joyce Watson  
Zoning Administration and  
Development Management  
County Office Building  
Room 109  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Baltimore County

Item No.: +272 (JLL)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for

Ronald Burns, Chief  
Engineering Access Permits  
Division

BS/

My telephone number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
3949 McDonogh Road, E/S McDonogh Rd, 400'		
S of Selina/Lesan Road, 2nd Election	*	ZONING COMMISSIONER
District, 2nd Councilmanic		
	*	OF BALTIMORE COUNTY
Richard H. and Patricia A. Schlottman		
Petitioners	*	CASE NO. 95-274-X
*   *   *   *   *   *		

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN  
 People's Counsel for Baltimore County

*Carole S. Demilio*  
CAROLE S. DEMILIO  
 Deputy People's Counsel  
 Room 47, Courthouse  
 400 Washington Avenue  
 Towson, MD 21204  
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of February, 1995, a copy of the foregoing Entry of Appearance was mailed to Richard H. and Patricia A. Schlottman, 3949 McDonogh Road, Randallstown, MD 21133, Petitioners.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

April 10, 1995

Ms. Elaine Hyatt  
2946 McDonogh Road  
Randallstown, MD 21133

Mr. Robert Piesto  
3944 McDonogh Road  
Randallstown, MD 21133

RE: Petition for Special Exception  
E/S McDonogh Road, 400 Ft. S  
of the c/l of Selina/Lesan Roads  
3949 McDonogh Road  
2nd Election District  
2nd Councilmanic District  
Richard H. Scholtzman, et ux -Petitioner  
Case No. 95-274-X

Dear Ms. Hyatt and Mr. Piesto:

Please be advised that an appeal of the above-referenced case was filed in this office on April 5, 1995 by Richard H. Scholtzman, M.D. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie A. Winiarski at 887-3353.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a horizontal line.

Arnold Jablon  
Director

AJ:jaw

cc: People's Counsel



## **APPEAL**

Petition for Special Exception  
E/S McDonogh Road, 400 ft. S  
of the c/l of Selina/Lesan Roads  
3949 McDonogh Road  
2nd Election District, 2nd Councilmanic District  
Richard H. Scholtzman, et ux-Petitioners  
Case No. 95-274-X

Petition for Special Exception

Property Description

Certificate of Posting

Certificate of Publication

People's Counsel Entry of Appearance

Petitioner(s) and Protestant(s) Sign-In Sheets

ZAC Comment Booklet

- Petitioner's Exhibit:
1. Plat Plan for Special Exception
  2. Floor Plans
  3. McDonogh Road Plan
  4. Six photographs
  5. Three letters of support
  6. Letter to Baltimore County from Marcella M. Durham,  
Northwest Community Association, Inc., dated  
February 21, 1995

Inter-Office Memorandum to Hearing Officer from John L. Lewis dated  
February 2, 1995

Zoning Commissioner's Order dated March 13, 1995 (granting)

Notice of Appeal received on April 5, 1995 from Richard H. Scholtzman, M.D.

cc: Dr. Richard H. Schlottman, 3949 McDonogh Road, Randallstown, MD 21133  
Ms. Elaine Hyatt, 3946 McDonogh Road, Randallstown, MD 21133  
Mr. Robert Piesto, 3944 McDonogh Road, Randallstown, MD 21133  
People's Counsel of Baltimore County, Mail Stop No. 2010

Request Notification: Patrick Keller, Director, Planning and Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director of ZADM



5/30/95 -Notice of Assignment for hearing scheduled for Wednesday, September 6, 1995 at 10:00 a.m. sent to the following:

Richard H. Schlottman, M.D.  
Elaine Hyatt  
Robert Piesto  
People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Virginia W. Barnhart, County Attorney

-----  
6/07/95 -Letter from N. Williams (1) entering appearance as counsel for Dr. Schlottman; and (2) requesting postponement of 9/06/95 hearing due to conflict with Court of Special Appeals schedule (confirming telephone conversation with this office 6/06/95).  
-----

6/09/95 -Notice of PP and Reassignment sent to parties; case rescheduled to Wednesday, September 27, 1995 at 10:00 a.m.

Richard H. Schlottman, M.D. -Petitioner  
Case No. 95-274-X

Page 2

---

9/27/95 -Hearing concluded before Board (R.C.B.). Notice of Deliberation sent to interested parties; scheduled for public deliberation on Tuesday, October 10, 1995 at 9:00 a.m.

---

10/10/95 -Deliberation concluded. Two to one decision; Petition for Special Exception GRANTED with restrictions (C & B); (Dissent by Schuetz). Written Opinions and Order to be issued by Board; appellate period to start with issuance date of that written Order.

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

*file copy*

TO: R. Schuetz  
C. Marks  
H. Buchheister

DATE: September 27, 1995

FROM: Kathi

SUBJECT: Case No. 95-274-X /Richard Schlottman, et ux

Enclosed for your information is a copy of the Notice of Deliberation regarding the subject matter, which has been scheduled for deliberation on Tuesday, October 10, 1995 at 9:00 a.m..

Should you have any questions regarding the above, please call me.

Attachment

P.S. to Chuck:

Attached is a copy of Sharp v. Howard County Board of Appeals and People's Counsel v. Mangione, per your request.

k

**BALTIMORE COUNTY, MARYLAND**  
**Inter-Office Memorandum**

DATE: February 2, 1995

TO: Hearing Officer

FROM: John L. Lewis  
Planner II, ZADM

SUBJECT: Item #272  
3949 McDonogh Road

The applicant desires to file for this special exception without following the special exception checklist procedures (particularly no sealed plans and descriptions). I advised that this was not usually acceptable procedure and contravened the BCZR and zoning checklist requirements and could prejudice the hearing.

The applicant felt that due to particular circumstances he desired to file as ~~it~~ and will accept any risks.

<sup>is</sup>

I advised that statements of support from all adjacent residents, the community association and an explanatory statement covering this unusual filing be included in the case file as soon as possible for your review.

JLL:scj



# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

September 27, 1995

## NOTICE OF DELIBERATION

Having concluded the hearing in this matter on September 27, 1995, the Board has scheduled the following date and time for deliberation in the matter of:

RICHARD SCHLOTTMAN, ET UX  
CASE NO. 95-274-X

DATE AND TIME : Tuesday, October 10, 1995 at 9:00 a.m.  
LOCATION : Room 48, Basement, Old Courthouse

---

cc: Newton A. Williams, Esquire Counsel for Appellant/Petitioner  
Richard H. Schlottman, M.D. Appellant/Petitioner

Elaine Hyatt Protestant  
Robert Piesto Protestant

People's Counsel for Baltimore County  
Pat Keller, Director /Planning  
David Green /Planning  
Lawrence E. Schmidt  
W. Carl Richards, Jr. /PDM  
Docket Clerk /PDM  
Arnold Jablon, Director /PDM  
Virginia W. Barnhart, County Attorney

Copies to: R. C. B.

Kathleen C. Weidenhammer  
Administrative Assistant



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: RICHARD SCHLOTTMAN, ET UX -Petitioners  
Case No. 95-274-X

DATE : Tuesday, October 10, 1995 @ 9:00 a.m.

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)  
Charles L. Marks (CLM)  
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer  
Administrative Assistant

Those present included Newton A. Williams, Esquire, Counsel for Appellants /Petitioners; and Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter of petition for special exception presented to the Board; testimony and evidence received September 27, 1995. Opinion and Order to be issued by Board setting forth written findings of fact.

ROS: Good Morning, ladies and gentlemen. We are here in Case No. 95-274-X. The purpose is to deliberate the matter tried before the Board on September 27, 1995, so as to comply with the requirements of the open meetings law. Before I proceed with the matter, there is one issue I would like to put out for the audience's consideration. In a recent case, the Board deliberated a matter; made findings of fact and concluded matter. Subsequent to the conclusion of that case, the Board received post-hearing memorandum from one of the parties. I am here to tell you all that we are not interested in receiving post-hearing memorandums. Once it is concluded, it is over. I make that particularly clear.

At this point, we will deliberate this matter. Chuck, in chambers, indicated he would go first. Starting with Mr. Marks ---

CLM: The case before the Board comes about by way of appeal from the hearing officer regarding a request made by Dr. Schlottman and his wife to operate a physician's office in primary residence in D.R. 5.5 zone. On March 13, 1995, the hearing officer denied the petition for special exception. This Board heard the case de novo. Prior to reaching a conclusion, I reviewed my notes, the exhibits and evidence submitted, and

testimony from both sides. The case itself I find is not complex. The Appellant has lived at the property for approximately 10 years. He proposes to operate a limited part-time medical practice from his home; zoned D.R. 5.5. At one time, such medical home practices were permitted in Baltimore County as a matter of right. In 1982, the County Council, sensing that some zoning restrictions should be imposed, passed Bill No. 105, which permitted such use, permitted that space allocated in private homes could not take up more than 25 percent of total floor space with only two professionals and two support persons allowed.

There is no question in my mind that the present zoning regulations do permit this type of limited medical practice in D.R. 5.5 zone, provided that (1) the proposed use is not detrimental to primary uses in the vicinity, more specifically residential in nature; (2) that conditions set forth in 502.1 of Baltimore County Zoning Regulations are satisfied. To that end, the Appellant has the burden to produce evidence and testimony demonstrating that the proposed use meets the primary use set out factor as provided for in the prescribed standard regulations in 502.1. Will use be conducted without real detriment to existing character of the neighborhood and is it such that it will not adversely affect public interest? Appellant produced testimony that, since hearing officer's proceeding, additional parking has been secured at 3947 McDonogh Road; additional spaces. Dr. Schlottman testified at length that it was a limited practice; practice from limited office location was relocated. At least four to five cars can park in available two driveways. He sees patients only by appointment during limited hours. He did not oppose special conditions to secure special exception.

Ms. Hyatt and Mr. Piesto testified in opposition to the special exception. They complained of extensive patient visitation, parking, and traffic problems. Steve Weber, Traffic Engineering, testified regarding McDonogh Road and that department's input regarding traffic difficulties in the area, should the special exception be granted. David Green, Community Planning, testified regarding community conservation in area.

Both parties made compelling arguments. Question that the Board must address in this matter is whether the special exception use is part of the comprehensive zoning plan; is it in the interest of the general welfare and therefore valid. A special exception use is part of the comprehensive zoning plan sharing presumption that as such it is in the general welfare and therefore valid absent any fact or circumstance negating that presumption. By defining a home medical

practice as appropriate use by special exception, the County Council has essentially declared such uses good if satisfied it promotes health, safety and general welfare of community. Major issue in this case from testimony and evidence produced are (1) lack of parking adequacy; (2) traffic safety; and (3) characteristics of neighborhood. The appropriate standard to be used in determining whether or not a requested special exception use would have adverse effect and should be denied are whether or not facts or circumstances show that a particular use would have any adverse effects above and beyond those inherently associated with the special exception use irrespective of its location. In my opinion, the space Appellant intends to occupy for limited practice is less than 25 percent allocated by Code. The proposed use meets the personnel requirements for zoning regulations; practice is to be limited one, 6 to 10 patients, with limited hours.

My opinion is that the proposed use would not be detrimental to the primary uses in area. Per Section 502.1, I do not believe the proposed use would be conducted with any real detriment to the character or nature of existing neighborhoods. Would not adversely affect the public interests. The addition of neighboring parking spaces and restricted hours and patients do not indicate that the proposed usage at Appellant's home would have any adverse impact above and beyond that inherently associated with such limited usage by special exception no matter where its location lies within the zone. On McDonogh Road, Mr. Weber termed it a minor arterial roadway. Limited usage could not have such an impact on traffic as to deny request. While I am appreciative of community conservation efforts, I see no mass migration by residents to seek such special exception; and, if so, the regulations protect the integrity of the neighborhood by denying such special exceptions as matter of law.

With certain conditions imposed, special exception does not tend to create problems in traffic, streets, etc., nor is it inconsistent with the spirit and intent of the zoning regulations. Would permit with the following restrictions: (1) Medical space be specifically limited to 630 sq. ft. as proposed in exhibit submitted; (2) Hours be limited to Wednesday, Thursday, Friday and Saturday from 9:00 to 11:00 a.m. and on Monday evening from 5:00 to 8:00 p.m.; (3) Patients shall be by appointment only; limited to no more than 10; (4) Signs posted clearly visible to patients concerning 3047 and 3049 McDonogh Road parking; and (5) Conditioned on the continued availability of parking at 3047 McDonogh Road.



Minutes of Deliberation /Richard Schlottman, et ux /95-274-X

HEB: Amazingly, we just heard already much of everything I was going to say. I have one exception -- I think the testimony of Ms. Hyatt regarding the traffic situation, it seemed most difficult and troubling; for the Monday evening, and concurring with all that has been said, I would say there would be no evening hours; that the Monday hours from 6:00 to 8:00 p.m. be eliminated, and with that I think the special exception should be granted.

ROS: We now have a split panel because I am going to lay out the reasons why I think it should be denied. As Mr. Zimmerman pointed out during cross-examination, this is a classic special exception case. The special exception, as has been indicated by me in numerous cases in the past, is a good and proper use which the Council has determined is a proper use in a given zone. So the question becomes: What circumstances exist at the instant site which would mitigate the presumption that the use is not going to have a detrimental effect? You have a good deal of case law which guides the Board. There are circumstances in this case which are of particular concern to me. First and foremost, I question the appropriateness of assigning any weight to an agreement to allow parking on an adjoining piece of property, particularly where we have the resident of that piece of property, Mrs. Der, who is 91 years old, is immobile; and a subsequent owner, whether heir, or if property goes through litigation as part of probate, etc., it may be entirely inappropriate and completely invalid that such agreement would exist on that property. At this point, we do not have a lease that is part of the evidence indicating that that arrangement would continue in what would essentially be in perpetuity, but we have new medical practice being contemplated by Dr. Schlottman, ostensibly new because practice is growing, and expectation is that more and more patients will be seen. Ms. Gray indicated that because of agreements with HMOs, will continue to see more patients.

We have a case where a growing practice will see more and more patients with adjoining property owner who has agreed to allow use of her property for parking; no lease which would bind subsequent property owner. We do not have, frankly, any case law which would enable the Board to allow such credibility to an agreement, verbal or otherwise, where a special exception is allowed on a given property, but is now going to impact adjoining property by allowing parking on that property. We are now affecting use of two properties and not just one in a special exception case, directly; not to mention whatever impact on surrounding properties by increased patient traffic. We also have a sight problem relative to the traffic coming off of Brenbrook at intersection with McDonogh Road and

continuing north. In other areas of D.R. 5.5 zone, Petitioners attempted to indicate to the Board that existing dental practice ought to be viewed in similar light, as Dr. Schlottman's hoped-for medical practice. And I see the properties as being radically different. The dental facility is one where there is a corner site with adequate parking with no sight line problems for anyone coming in or out. Where Dr. Schlottman's property is concerned, substantial sight line problems for northbound traffic on a substandard street per Mr. Weber. Not standard; 48 ft. curb to curb which also has center lane. To have a traffic condition already in existence no matter what the use; whether residential or otherwise, anything moving into lanes of traffic, where County's Traffic Engineering has recognized is somewhat hazardous situation due to width of roadway. Angle in which Brenbrook comes into McDonogh Road and the speed at which traffic moves along that stretch of roadway, the issue of traffic is not one of more and more cars entering the roadway. Issue is the manner in which traffic will enter roadway. And if it were one patient, it would be a hazard; 20 patients, it would be 20 times that one. But it's still the same hazard.

So the question then is, is it a good use in a D.R. zone? The County Council has decided, Yes, it's a good use. Yes, it's necessary to have doctors' offices in residential areas; necessary to have dental and other similar types of similar professional home occupations for public good and safety and welfare. However, in this case, I find that there is evidence which mitigates the good which comes from that type of use in the form of traffic difficulties, as well as what I would perceive to be an invalid agreement with adjoining property owner to allow visitors onto site.

So, for those reasons, I would deny the petition for special exception and right now, it's up to my colleagues to convince me otherwise.

**HEB:** I have a couple of questions on your commentary. Is the lack of the lease and any kind of concrete evidence as to use of neighbor's driveway enough that would void the legality of such a use, concerning parking. So they don't have it in writing; does that question about ample parking enter into that matter?

**ROS:** Ample parking in general enters into the matter.

**HEB:** There are four to six spaces on the Schlottman property; at least two spaces in front of the property.

Minutes of Deliberation /Richard Schlottman, et ux /95-274-X

ROS: While they can get four or five cars, they have to back out. It's essentially a valet type of parking arrangement; it's difficult to move around and get onto the street. There's nothing to mitigate problems with getting first car out.

HEB: We know of other cases where such parking permitted as particular site has been approved, and with the same consequences, backing out into busy road. It's a problem that all people on this street have. You understand that if you park in your driveway, you back into a busy highway, particular of metro Baltimore. Cul de sac is changing dangerous situations. Actually what you are saying is the lease is not a restricting factor here.

ROS: The most important thing in my view is the sight lines problem.

HEB: The sight line problem is a good point; difficulties of Brenbrook and McDonogh Road. But then again, everyone has sight problem. I have sight problem. These are situations which are in our metro area. Should that prevent physician from providing medical practice in neighborhood community, pretty much as they've outlined here? Traffic situation for 1-1/2 years has not been recognized. Only in time of this case that it seems that Mr. Green - he's certainly aware of what goes on in his area; that whole area out there in which I get tied up; can appreciate area is impossible. It's not just Brenbrook and McDonogh; also on other roads, Offutt, as a matter of fact. I see sight problem is there specifically, but is that enough to deny special exception? I cannot see where this very limited, and to that point I suggest no evening hours, practice from 9:00 to 11:00 a.m. four days of the week, is that detrimental in those 9 to 11 hours; how much traffic on this road?

CLM: I don't think that's excessive.

ROS: It's not a possible question of whether or not something is going to happen; something will happen, but when.

Question was asked during proceedings, how they define themselves as primary care physician, in HMO setting. Mrs. Gray indicated they accept new patients as primary care physician in HMOs. Primary care physician in an HMO is first step, and a doctor is paid in those types of arrangements; number of different physicians. Often times, as a result of a contract between a doctor and an HMO, the manner in which the doctor follows guidelines of practice within agreement with the HMO determines if he sees patient first or patient goes outside. At this point, we do not have anything to

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indicate.

CLM: I do believe the Doctor indicated he would limit to six to eight patients per day. If you look at the restrictions, you would not have more than eight to ten patients per day.

ROS: How do you tell that? It's impossible to enforce. The condition is unenforceable. If someone calls the doctor, is it up to the Board to tell them that will have to pay the patient's bill because they cannot see Doctor Schlottman because he saw his quota?

HEB: A lot of that is conjecture. We do not know what we are hearing, negatives about HMOs, etc.

ROS: My point is that we do have testimony indicating six to seven and a growing practice. Take it up to ten; you are still going to see more patients per day in a growing practice.

HEB: On that point, I have lesser reservations. I think the traffic conditions with the obvious problems that are prevalent everywhere; Old Court Road and Liberty Road where he had his practice - common in that location. I think throughout this testimony and Counsel for Petitioner - kept talking about limited practice. And the question is: Can a doctor with a practice truly limit that practice and, if for any reason, this practice would have to grow, would it be a detriment to the neighborhood?

CLM: You have to remember, these are by appointment only. Even under the HMO, you have to have an appointment. If you set eight to ten patients as your standard, you cut it off by appointment only.

ROS: How do you cut it off? If my daughter is ill, and he hit the tenth patient of the day, if I call the doctor and indicate that my daughter is ill, as I did and the facility was closed, don't you know that as a parent, I got insistent that she would be seen. I'm saying that Dr. Schlottman is going to see that patient. This gentleman will see that patient because he has taken an oath. It has nothing to do with restrictions. Restrictions go to use. We can limit the hours he operates. There are things a doctor can do in the absence of seeing a patient right then and there. But there are also instances where he will necessarily exceed that standard.

I don't have a problem with a split Board. But I think that the restrictions need more thought. I ask that you put restrictions in the majority which would be at least enforceable. Getting rid of Monday nights may not be

Minutes of Deliberation /Richard Schlottman, et ux /95-274-X

practical thing for Doctor Schlottman. He sees a variety of patients from a number of areas. He's got a thriving practice; loyalty among patients. May be that they can only see him at night.

HEB: If there's going to be a traffic difficulty for everybody, immediate neighborhood with practice across the street, that's why I would suggest that Monday evening hours be eliminated. Making concession of sorts that this hardship that Dr. Schlottman has; reasons why he moved to his home to conduct his practice. But there is a consideration and in my mind to give thought to family difficulties, etc. This is a full time State of Maryland physician. He is limited just from that. We hope that the HMO staff would see this physician has reason to deny patients and would accept that.


ROS: Well, that to me is purely conjecture. It's a contractual issue between Dr. Schlottman and his HMO which we cannot consider here. To hope that patients will have service covered is something that I cannot guess. I think that by acknowledging that there is a traffic problem, by pulling onto McDonogh Road at night, to me is acknowledging that there is in general a traffic problem. People don't get sick just during the day. They get sick all hours of the day and night.

HEB: Traffic is always more difficult at night, whatever the neighborhood.

ROS: You may be placing unfair restrictions as well, but maybe change hours to 7:00 to 9:00 p.m. so completely out of rush-hours traffic. But this would not limit number of patients. But would severely limit hours he could see patients. I will stick by my denial.

ROS: I have not changed my mind. Written opinions will be issued from the Board subsequent to this hearing. I can assure you that, because of the Board's docket, this will not happen today. However, any petition for judicial review should be made from the date of issuance of those written opinions and Order, and not from today's date.

Respectfully submitted,

  
Kathleen C. Weidenhammer  
Administrative Assistant

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THOMAS J. RENNER  
WILLIAM R. ENGLEHART, JR.  
STEPHEN J. NOLAN\*  
ROBERT L. HANLEY, JR.  
ROBERT S. GLUSHAKOW  
STEPHEN M. SCHENNING  
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RALPH E. DEITZ  
(1918-1990)

WRITER'S DIRECT DIAL  
823-

7854

\*ALSO ADMITTED IN D.C.  
\*\*ALSO ADMITTED IN NEW JERSEY

June 6, 1995

Mrs. Kathleen C. Weidenhammer  
County Board of Appeals  
Old Courthouse, Room 49  
Towson, Maryland 21204

Re: The Schlottman Case, 3049 McDonogh Road  
Case No. 95-274-X  
Just Assigned for Wednesday,  
September 6, 1995 at 10:00 a.m.

Dear Mrs. Weidenhammer:

Please enter my appearance on behalf of Dr. Richard Schlottman, the Appellant and Petitioner in the above entitled matter.

We have just received a Board Notice for September 6th, a Wednesday, at 10:00 a.m.

Unfortunately, as I told Charlotte, a member of your staff, I am scheduled to appear in front of the Court of Special Appeals sometime between the 5th and 15th, and the Court has not set the specific date as yet.

I know if we accept September 6th, the Court will set it for September 6th. Therefore, we would respectfully request that the matter be continued to a very close date, and you mentioned September 27th.

By a carbon copy of this letter to the People's Counsel and to the two Protestants, we are suggesting that the matter be reset for September 27th, another Wednesday, presumably at 10:00 a.m.

Thanking you and your staff for your kind attention to this request, and looking forward to agreeing upon a date I am

Respectfully,

*Newton A. Williams*

Newton A. Williams

NAW/vrs  
cc: People's Counsel for  
Baltimore County  
Ms. Elaine Hyatt  
Mr. Robert Piesto

March 31, 1995

Honorable Lawrence E. Schmidt  
Zoning Commissioner  
Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

Re: Petition for Special Exception  
Case No. 95-274-X  
Property: 3949 McDonogh Road

Dear Commissioner Schmidt:

Please enter an appeal to the County Board of Appeals from your Findings of Fact and Conclusions of Law dated March 10, 1995.

My check in the amount of \$285.00 representing \$250.00 for the appeal and \$35.00 for the sign is enclosed herewith.

Thank you for your kind attention to this appeal letter.

Sincerely,

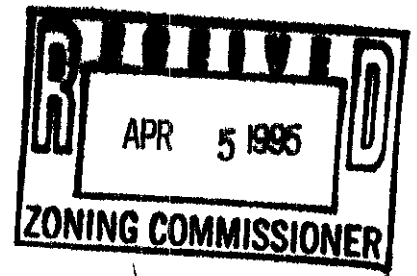
*Richard H. Schlottman*

Richard H. Schlottman, M.D.

cc: Baltimore County Board of Appeals  
Ms. Elaine Hyatt  
Mr. Robert Piesto

RECEIVED  
APR 7 1995

ZADM



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Elaine Hyatt

21133  
3946 McDONOUGH RD RANDALLSTOWN

ROBERT PIESTO

3944 MCDONOUGH RD RANDALLSTOWN, MD  
21133

Order denied 3/13/95

M. A. Arab  
Zoning Comm  
officer



PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

Richard Schmitt

ADDRESS

3849 McDougall Rd. - Round Bay

21133

**D.R. 5.5**

NEWBRIDGE  
CT.

NAIRAM  
CT.

AMY  
LANE

AMY  
LANE

LESAN  
RD

ROAD

ROAD

**D.R. 5.5**

SELINA  
RD.

SITE

**D.R. 5.5**

FRANCINE  
CT.

McDONOUGH

**D.R. 5.5**

ROXANNE

NW 81

Item # 272

LUNO  
CIRCLE

We agree with the State and, consequently, will dismiss appellant's application. We are mindful that the cases upon which the State relies were decided in the context of the predecessor Rule to Maryland Rule 8-202, pertaining to appeals of right, rather than in the context of Maryland Rule 8-204, pertaining to Applications for Leave to Appeal. That distinction is of no moment. Maryland Rule 8-202 requires that a "notice of appeal shall be filed within thirty days after entry of the judgment or order from which the appeal is taken." In that regard, it is almost identical to Rule 8-204(b)(1). Moreover, the rationale for requiring strict adherence to the time requirements in the case of appeals of right is no less persuasive where application for leave to appeal is sought. We hold, therefore, that an application for leave to appeal must be filed, as Maryland Rule 8-204(b)(1) prescribes, within thirty days from the date of the judgment from which appeal is sought and that the trial court may not, in the absence of specific authority to do so, extend that time.

#### APPLICATION FOR LEAVE TO APPEAL DISMISSED.

584 A.2d 1318

### PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

Nicholas B. MANGIONE, et ux.

No. 465, Sept. Term, 1990.

Court of Special Appeals of Maryland.

Feb. 1, 1991.

Landowners appealed decision of county board of appeals denying special exception to construct nursing home in residential area. The Circuit Court, Baltimore County, William M. Nickerson, J., affirmed, but then modified order

and remanded case for evidentiary hearing. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) circuit court improperly remanded case, and (2) landowners were not entitled to special exception.

Reversed.

#### 1. Zoning and Planning ⇨741

Circuit court order remanding case to county board of appeals for evidentiary hearing on request for special exception to construct nursing home in residential area was final and appealable. Code, State Government, § 10-215(e, g).

#### 2. Zoning and Planning ⇨725, 726

Circuit court's denial of special exception to construct 240-bed nursing home in residential area was improperly modified to remand case to county board of appeals for evidentiary hearing on alleged request to construct 120-bed facility, where nothing indicated that application for 120-bed facility was ever filed with administrative agency or that original application for 240-bed facility was downsized by proper amendment.

#### 3. Administrative Law and Procedure ⇨725

Petition of appeal to circuit court of decision of administrative agency is "pleading."

See publication Words and Phrases for other judicial constructions and definitions.

#### 4. Zoning and Planning ⇨590

Landowner's petition of appeal to circuit court after county board of appeals denied request to construct nursing home in residential area was "pleading" and, thus, landowner was bound by admission in petition that application was for 240-bed facility and was prohibited from asserting in motion to alter and amend circuit court judgment that application was for 120-bed facility.

## 5. Zoning and Planning §§678

Special exception is part of comprehensive zoning plan and shares presumption that it is in interest of general welfare and is valid.

## 6. Zoning and Planning §§481

"Special exception" is use which has been legislatively predetermined to be conditionally compatible with uses permitted as of right in particular zone, condition being that zoning body must, in each case, decide under specified statutory standards whether presumptive compatibility exists.

See publication Words and Phrases for other judicial constructions and definitions.

## 7. Zoning and Planning §§747

Court of Special Appeals was required to give due deference to right of administrative agency, such as county board of appeals, to draw all reasonable inferences from facts and circumstances presented before it in proceeding for special exception to construct nursing home in residential area.

## 8. Zoning and Planning §§508

County board of appeals could conclude that 240-bed nursing home in residential area would have particular adverse impact and the landowners were not entitled to special exception to construct home; home was planned for dominant terrain above neighborhood, and testimony indicated problems with residential streets, erosion, and storm water runoff.

Peter Max Zimmerman (Phyllis Cole Friedman, on the brief), for appellant, People's Counsel, Towson.

Michael P. Tanczyn, Towson, for appellant, Dulaney Valley Improvement Ass'n, Inc.

Joseph C. Laverghetta, Towson, for appellees.

Argued before BLOOM, KARWACKI and CATHELL, JJ.

CATHELL, Judge.

[1] This is a zoning appeal from the order of the Circuit Court for Baltimore County remanding the case to the Baltimore County Board of Appeals (hereinafter Board).<sup>1</sup> The appellees, Nicholas B. Mangione et ux., requested a special exception for a nursing home and additional variances to permit a parking lot setback and a larger sign than ordinarily permitted. These requests were denied by the zoning commissioner. On appeal to it, the Board, after a hearing *de novo*, also denied the requests. Thereafter, the appellees appealed the Board's decision to the Circuit Court for Baltimore County. Initially, the circuit court affirmed the Board's decision. Thereafter the appellees filed a Motion to Alter or Amend Judgment. The circuit court granted the appellees' motion and remanded the case to the Board for an evidentiary hearing and finding, modifying its prior order. The appellants, People's Counsel for Baltimore County et al., then appealed to this Court.

### The Issues

Whether the Circuit Court for Baltimore County abused its discretion in remanding the case to the Board; and whether the Board acted arbitrarily and capriciously in denying the appellees' request for a special exception to

1. The appellees argue that this appeal must be dismissed because the order from which the appeal is taken is not a final appealable order. We disagree. In the recent case of *Hickory Hills Limited Partnership v. Secretary of State of Maryland*, 84 Md.App. 677, 581 A.2d 834 (1990), we clarified which orders of the circuit court remanding a case to the administrative agency are final in cases involving Md. State Gov't Code Ann. § 10-215(e). At oral argument an inference was made that the trial judge may have been construing this matter as an appeal under Sec. 10-215(g) when in fact the appellee is not a state agency included within the ambit of that section. Appellant contends that the appeal to the circuit court was pursuant to the B Rules. We need not determine which set of rules was being applied because under either, the trial court's ruling was a final appealable order. Accordingly, appellee's argument that the case should be dismissed is without merit.

locate a convalescent home in an area zoned for residential use.<sup>2</sup>

### The Holding

For the reasons that follow, we shall hold that the Circuit Court for Baltimore County abused its discretion in remanding the case to the Board, and that the Board did not act arbitrarily and capriciously in denying the appellees' request for a special exception to locate a convalescent home in an area zoned for residential use.

### The Facts

The appellees requested a special exception to build a convalescent home on a four-acre parcel inside a single-family detached home area of Lutherville, Baltimore County, which is zoned for residential use (D.R. 5.5). The appellees also requested variances for a reduced parking lot set back and for a larger sign than ordinarily permitted. The property at issue is located in the part of Lutherville, east of York Road and just north of the Baltimore Beltway York Road exit serving Lutherville-Timonium. The subject property is a full block away from York Road, being parallel to York Road and one block easterly. The York Road corridor in this vicinity is primarily commercial in nature, but the areas to the interior are residential.

On July 9, 1987, the zoning commissioner denied an application for a special exception, and the variances were dismissed as a consequence. The commissioner cited the interior residential location, the comparatively narrow feeder roads, and the limited access to York Road. He found that the proposal would have an unusual adverse impact as compared with other residential zone locations, and that it would be inconsistent with the purposes, spirit, and intent of the zoning scheme. The appellees then appealed to the

Board pursuant to the Express Powers Act and the Baltimore County Charter.<sup>3</sup> After a lengthy hearing, the Board affirmed the commissioner's decision. The Board concluded:

In doing so, the Board finds uncommon problems associated with this proposed development at this specific locale. Of particular concern is the size and scope of the proposal. The projected facility houses 260 [240] beds, contained within two large wings. Additionally, a parking area large enough to house 100 vehicles is planned. Unquestionably, the project as proposed would overwhelm and dominate the surrounding landscape. This is particularly relevant in considering this site's location and surrounding community. Although not far from the commercial corridor of York Road, the proposal represents the deepest intrusion into the residential community of Dulaney Valley. The sheer size of the project from a building footprint standpoint would clearly exacerbate an already worsening storm water runoff situation within this community. Further, the Board remains unconvinced that the traffic generated by the home's employees and visitors would not overtax an interior community road system designed to accommodate residential traffic. At its essence, the Board finds as fact that the Petitioner has not met his burden that the proposed use is not detrimental to the health, safety or general welfare of the locality as provided in B.C.Z.R. 502.1.

Upon appellees' appeal, the circuit court, applying the "substantial evidence" test, initially affirmed the Board's decision. After the court's opinion, the appellees filed a Motion to Alter or Amend Judgment. The court granted the appellees' motion and modified its earlier ruling for the following reason: "unrecognized disparity in the pleadings and unresolved question as to what Appellant [appellee] is seeking in terms of the size of the nursing home." Then

### 2. The appellants phrase the issues as:

1. Whether the Circuit Court Usurped the Function of the Board of Appeals in Reversing its Denial of the Special Exception.
2. Whether the Judicial Decisionmaking Process was Capricious.

3. See Md. Ann. Code art. 25A, § 5(U), (X) and Baltimore County Charter Art. 6.  
85 Md.App.—25

the court ordered that the case be remanded to the Board for an evidentiary hearing and finding in accordance with its opinion.

## I

## Abuse of Discretion: The Remand

[2] Judge Bishop, writing for this Court in *Alston v. Alston*, 85 Md.App. 176, 582 A.2d 574 (1990), restated the standard of review where an abuse of discretion is alleged:

While the "clearly erroneous" standard applies to the court's findings of fact, the "abuse of discretion" standard applies to the court's determinations of legal questions or conclusions of law based upon its findings of fact. We will not interfere with such determinations without a clear showing of abuse of that discretion. See *Davis v. Davis*, 280 Md. 119, 124-25 [372 A.2d 231] (1977).<sup>14</sup>

We hold that the circuit court's modification and remand to the Board was not warranted. When the court said "unrecognized disparity in the pleadings and unresolved question[s] as to what Appellant [appellee] is seeking in terms of the size of the nursing home," it meant the size of the convalescent home, i.e., 240-bed or 120-bed. The appellees originally had petitioned for a 240-bed facility. Throughout the proceedings before the zoning commissioner and the Board, the project at issue was for a 240-bed facility. After the Board had rendered its decision affirming the commissioner in rejecting a special exception for a 240-bed complex and, after the circuit court's initial affirmation, the appellees asked the circuit court to consider a 120-bed facility.

Our review of the record does not reflect that a petition for a 120-bed facility was ever filed with the administrative zoning agency. The parties have inexplicably failed to include a copy of the original application for a special

4. We discuss the standard of review by a trial court of agency decisions in part II, *infra*, of our opinion.

exception as a part of the extract. Neither did they include a copy of the appellee's Petition of Appeal to the circuit court in that extract. They have included in the extract a copy of appellee's Motion to Alter or Amend which appears to state that their petition for special exception had been for "a 120-bed nursing home ..." and indicates that the Board had failed to act on the 120-bed request.

While we do not normally go beyond the extract and examine the record, we chose to do so in this case in light of the apparent inconsistency between what had occurred at the agency and what appellee alleged had occurred in his Motion to Alter or Amend.

We first note that the site plans that are included in the extract as being filed with the application (that is missing), refer to a 240-bed facility. The appellee's Petition of Appeal to the circuit court states that "the application and plat projected a facility housing 240 beds contained within two wings."

[3, 4] A petition of appeal to the circuit court of the decision of an administrative agency is a pleading. Accordingly, appellee was bound by the admission of his pleading. In footnote 4 in *Thomas v. Solis*, 263 Md. 536, 544, 283 A.2d 777 (1971), the Court of Appeals briefly discussed such admissions:

The very signing of the petition in the instant case would satisfy provision (2) of Article 93, Sec. 1-208. See *Matthews v. Kernwood, Inc.*, 184 Md. 297, 306, 40 A.2d 522 (1945); and *Parker v. Tighman V. Morgan, Inc.*, 170 Md. 7, 25, 183 A. 224 (1936) for cases which hold that parties are generally bound by allegations or admissions in their pleadings.

In *Matthews v. Kernwood, Inc.*, 184 Md. 297, 306, 40 A.2d 522 (1944), the Court of Appeals held that where an allegation of a violation of a restriction had been made in a pleading, the pleader could not thereafter allege that the violation had not occurred. In discussing admissions in

appellate briefs, that Court in *Van Royen v. Lacey*, 266 Md. 649, 296 A.2d 426 (1972), stated:

If the appellees honestly believed that a tenancy by the entireties interest were [sic] involved here it is strange they did not raise that contention earlier.... Be that as it may, estoppel by admission or by pleading has long been recognized in this State.... In [*Edes v. Carey*, 46 Md. 24, 41 (1887)] the Court of Exchequer in *Care v. Mills*, 7 H. & W. 927, was quoted as saying, "A man shall not be allowed to blow hot and cold, to claim at one time and deny at another."

*Van Royen*, at 651-52, 296 A.2d 426. (Citations omitted.) By admitting in his original petition to the circuit court that his application was for 240 beds, appellee was thereafter prohibited from asserting, as he misleadingly did in his Motion to Alter and Amend, that the application was for 120 beds.

We also note that the Zoning Administrator's denial of the application described it as being for "240 beds and three stories" composed of 120 beds for domiciliary care... and 116 beds for nursing patients.<sup>5</sup> In upholding the Commissioner, the Board of Appeals stated "the Petitioner seeks approval to construct a 240-bed nursing home...."

Appellee, in his opening argument to the circuit court, stated, "The plat that we submitted showed a layout of two buildings... and showed them to be 240 beds total. Now, we were not before the Zoning Commissioner to obtain permission to build 240 beds. We were only before the Zoning Commissioner to get zoning for a convalescent home."<sup>6</sup>

5. An additional four beds were proposed for another use.
6. Appellee disregarded the requirements of Section 502.1 of the County Code which require a special use to "not":

The record reflects that at no time was an application for a 120-bed facility ever filed with the administrative agency. Nor is there any record that the original 240-bed application was downsized by proper amendment. There was, to be sure, testimony that a 120-bed facility would be less objectionable than a 240-bed facility and some indications from that testimony that appellee might accede to a lesser facility, but our review of the record indicates very little more than speculation on that point and nothing that arises to a recognizable request for downsize modification. Furthermore, the Board made no ruling on the feasibility of a 120-bed facility. As we shall discuss in this opinion, the circuit court's scope of review is limited in nature—to determine whether the Board's decision was based on "substantial evidence"—which it correctly determined the first time. When it granted the motion to alter and amend, the trial court abused its discretion.

## II

### A. The Law of Special Exceptions

[5, 6] The term "special exception" refers to a "grant by a zoning administrative body pursuant to existing provisions of zoning law and subject to certain guides and standards of special use permitted under provisions of existing zoning law."<sup>7</sup> *Cadem v. Nanna*, 243 Md. 536, 543, 221 A.2d 703 (1966). It is a part of a comprehensive zoning

- b. Tend to create congestion in roads...  
\* \* \* \*
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for ... water, sewerage, transportation or other public requirements, conveniences or improvements.
- The size and scope of the project are thus relevant considerations. To contend otherwise, as appellee does, is to engage in specious and sophistic reasoning.
7. The regulations applicable in this case are Baltimore County Zoning Regulations (BCZR) 502.1; 1B00.1-2; and 1B01.1C.

plan, sharing the presumption that it is in the interest of the general welfare and is, therefore valid. *Rockville Fuel and Feed Co. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183, 262 A.2d 499 (1970). It is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each case, decide under specified statutory standards whether presumptive compatibility exists. *Creswell v. Baltimore Aviation Service, Inc.*, 257 Md. 712, 264 A.2d 838 (1970). In sum, special exception is a "valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding." *Rockville Fuel*, 257 Md. at 188, 262 A.2d 499. (Citing *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287, 96 A.2d 261 (1953)).

Most recently, the Court of Appeals, in *Board of County Comm'ys v. Holbrook*, 314 Md. 210, 550 A.2d 664 (1988), reiterated the law of special exceptions. Quoting from *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), the Court stated:

"The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

\* \* \* \* \*

"The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. *Turner v. Hammond*, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); *Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287, 96 A.2d 261, 264 (1953); *Anderson v. Sawyer*, 23 Md.App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied."

*Holbrook*, 314 Md. at 216-17, 550 A.2d 664 (quoting *Schultz*, 291 Md. at 11-13, 432 A.2d 1319). (Emphasis in original.) Then, the Court stated, again, quoting from *Schultz*, 291 Md. at 15, 432 A.2d 1319, the requisite adverse impact required to warrant a denial of special exception: "[A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is *whether there are facts and circumstances that show that the particular use proposed at the*



*particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."*

*Holbrook*, 314 Md. at 217, 550 A.2d 664. (Emphasis in original.)

#### B. The Standard of Review

The general standard of judicial review<sup>8</sup> of most administrative factfinding is: "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment."<sup>9</sup> *Holbrook*, 314 Md. at 218, 550 A.2d 664 (quoting *Supervisor of Assess. v. Ely*, 272 Md. 77, 84, 321 A.2d 166 (1974)). Specifically, we shall review facts and circumstances upon which the Board could have found that the special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Holbrook*, 314 Md. at 217-18, 550 A.2d 664. In addition, "if the evidence makes the issue of harm fairly debatable, the matter is one for the Board's

8. We have heretofore indicated that the trial court abused its discretion in granting the motion to alter and amend.

9. It may be otherwise stated as the: "substantial evidence test," which is "whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion." *Toland v. State Bd. of Educ.*, 35 Md.App. 389, 396, 371 A.2d 161 (1977) (quoting *Comm'r, Baltimore City Police Dept. v. Cason*, 34 Md.App. 487, 508, 368 A.2d 1067 (1977)). See also *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443, 168 A.2d 390 (1961) ("The substantial evidence test means that the reviewing court's inquiry is whether on the record the agency could reasonably make the finding.... Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'")

decision, and should not be second-guessed by an appellate court." *Holbrook*, 314 Md. at 218, 550 A.2d 664.

[7] In *Snowden v. Mayor and C.C. of Balto.*, 224 Md. 443, 448, 168 A.2d 390 (1961), the Court of Appeals said: The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. "The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." [Citation omitted.]

Therefore, we must give due deference to the right of an administrative agency, such as the Baltimore County Board of Appeals, to draw reasonable inferences from the facts and circumstances presented before it. *Holbrook*, 314 Md. at 218, 550 A.2d 664. See also *Ramsay, Scarlett & Co., Inc. v. Comptroller*, 302 Md. 825, 490 A.2d 1296 (1985), and *Comptroller of the Treasury v. World Book Childcraft International, Inc.*, 67 Md.App. 424, 508 A.2d 148 (1986).

#### C. The Case Sub Judice

[8] Before the Board were various facts and circumstances which, we believe, satisfy the *Schultz* standard of particular adverse impact. The Board, under the *Schultz* standard, reviewed the evidence for the required particular adverse impact. There was testimony that the proposed convalescent home would sit on the prominent or dominant terrain above the neighborhood, which would block out light from the west; and with prevailing breezes from the west, would generate odors from the central kitchen as well as from the dumpster. There was testimony concerning the effects of the development along the York Road corridor and the erosion created by the development and storm water runoff. There was testimony concerning the effects of the intrusion of the project into the residential neighborhood presently existing around that location. There was

testimony about small arterial streets whose only access to York Road from the community was by way of Greentridge Road, and that the narrow, winding nature of those streets, with the increased traffic, would jeopardize the safety of the children playing in the streets. Furthermore, there was testimony concerning the overflow of contaminated medical waste and storm water management.

The Board, as finder of fact, said it was "obligated to judge the credibility of each witness and apply each Board member's own knowledge, developed through experience and training, to the evidence presented." In sum, the Board concluded that the proposed project would "overwhelm and dominate the surrounding landscape," and that it would represent "the deepest intrusion into the residential community of Dulaney Valley." The Board found that the project would "clearly exacerbate an already worsening storm water runoff situation" within that community. Further, the Board was unconvinced that the "traffic generated by the home's employees and visitors would not overtax an interior community road system designed to accommodate residential traffic." The Board then held that the appellees failed to meet its burden as provided under B.C.Z.R. Section 502.1.<sup>10</sup>

10. That section provides:

- Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
- a. Be detrimental to the health, safety, or general welfare of the locality involved;
  - b. Tend to create congestion in roads, streets or alleys therein;
  - c. Create a potential hazard from fire, panic or other dangers;
  - d. Tend to overcrowd land and cause undue concentration of population;
  - e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
  - f. Interfere with adequate light and air;
  - g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

Given those facts and circumstances, we believe there was sufficient showing of particular adverse impact as required under *Schultz*.

Conclusion

"The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan." *Schultz*, 291 Md. at 11, 432 A.2d 1319. (Emphasis in original.) We conclude that the Board's decision, denying the special exception, was not arbitrary and capricious. The trial court's initial opinion was correct. Its subsequent modification was not, and thus was an abuse of discretion.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY GRANTING THE MOTION TO ALTER AND/OR AMEND JUDGMENT AND REMANDING THE CASE TO THE BOARD OF APPEALS IS REVERSED; COSTS TO BE PAID BY APPELLEES."

- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations. [Citations omitted.]

11. This case was originally filed as an unreported case. At the time, the mandate inadvertently assessed costs against the prevailing party. We have *sua sponte* corrected the mandate in reporting the case.

As a further result of the [appellees'] *negligence*, the [appellants] did not have available to them sufficient insurance coverage....

(emphasis added). During the summary judgment hearing, appellants specifically refuted the contract argument grounds proposed by appellees and stated:

That's not what we are suing for. We are suing for their negligence. The only issue, the primary issue and really the only significant issue that has to be tried here that's going to be before this court is whether or not under the Libby case State Farm complied with its duty under the statute.

*Libby* is also instructive as to the type of actions that would satisfy the "affirmative duty" required by the statute. The *Libby* Court stated that the "statutory duty is met and that the opportunity to contract for the additional coverage is available if the insurer (1) will issue it upon request and (2) has taken *reasonable steps* to inform its insureds that such coverage is available." *Libby*, 79 Md.App. at 726-27, 558 A.2d 1236 (emphasis added). Thus stated, the issue of whether the appellees took "reasonable steps" to inform the appellants of the availability of additional coverage is a factual issue and should not have been decided by a motion for summary judgment.

In the present case, it seems curious that, throughout the litigation below, the appellees have tried to characterize this case as one based in contract. In fact, appellants in their reply brief state that

[appellees] continue in their brief their attempt to obfuscate the issues of this case. State Farm and Russell wish to transform [appellants'] tort action into a breach of contract case so that they can avoid liability for breaches of a duty imposed by statute.

We agree. As explained above, appellants' compliance with the terms of the policy is not relevant. Consequently, summary judgment was inappropriately granted.

JUDGMENTS REVERSED, CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY WITH INSTRUCTIONS TO CONDUCT FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEES.

632 A.2d 248

Robert V.L. SHARP, et al.

v.

HOWARD COUNTY BOARD OF APPEALS, et al.

No. 103, Sept. Term, 1993.

Court of Special Appeals of Maryland.

Nov. 1, 1993.

Protesting property owners appealed decision of county zoning board granting special zoning exception to owners of private airstrip, and requested that assigned judge recuse himself from hearing zoning appeal. The Circuit Court, Howard County, Raymond J. Kane, Jr., J., denied motion for recusal and sustained board's grant of special exception. Protesting landowners appealed. The Court of Special Appeals affirmed. Protesting landowners petitioned for writ of certiorari, which was granted. The Court of Appeals, 327 Md. 17, 607 A.2d 545, held that Circuit Court judge should have recused himself, and reversed and remanded with directions. On remand, the Circuit Court, Dennis M. Sweeney, J., affirmed board's decision, and protesting landowners again appealed. The Court of Special Appeals, Harrell, J., held that county zoning board's decision treating or equating adverse effects resulting from existing or proposed operations of private airstrip as those, in kind and degree, inherent in operation of private airfield and airplane storage use regardless of

where it was sited in zoning district did not incorrectly interpret case law requiring denial of special exception if particular use and location proposed would have adverse effects above and beyond those inherently associated with such use irrespective of its location.

Affirmed.

### 1. Zoning and Planning ⇨536

Whether presumption that abstract special exception use is in interest of general welfare is rebutted must be addressed by zoning body to which legislative body has delegated that responsibility on case-by-case basis, absent legislative guidance.

### 2. Zoning and Planning ⇨489

In any case-by-case analysis of whether to grant special exception, zoning body may, in application of its expertise, recognize effects of proposed use that it considers common to that use regardless of where it may be located in applicable zone(s).

### 3. Aviation ⇨214

County zoning board's decision treating or equating adverse effects resulting from existing or proposed operations of private airstrip as those, in kind and degree, inherent in operation of private airfield and airplane storage use regardless of where it was sited in zoning district did not incorrectly interpret case law requiring denial of special exception if particular use and location proposed would have adverse effects above and beyond those inherently associated with such use irrespective of its location within zone; evidence supported finding that potential dangers from airplane crashes were such remote possibility as not to constitute adverse effect to owners of vicinal properties, and board resolved in favor of applicants conflict as to elevation of airstrip compared to surrounding land.

### 4. Zoning and Planning ⇨621

Court of Special Appeals will not substitute its judgment for that of zoning board when board was acting within its discretionary range.

Roger W. Titus (Paula T. Laboy and Venable, Baetjer and Howard, on the brief), Rockville, for appellants.

Lonnie R. Robbins, Asst. County Sol. (Barbara M. Cook, County Sol., on the brief), Ellicott City, for appellee Howard County.

Thomas E. Lloyd (Lloyd, Kane & Wieder, P.A., on the brief), Ellicott City, for appellees Enos C. Levy, et al.

Argued before ALPERT, HARRELL and MURPHY, JJ.

HARRELL, Judge.

*Id imperfectum manet dum confectum erit (it ain't over until it's over).*

Once more (and perhaps for the last time), the judiciary of Maryland has been implored to resolve a skirmish in Howard County's answer to the Hundred Years War. A stalwart band of Howard County property owners who are operating a private airstrip on a portion of their residential properties have bested, with the aid of the Howard County Board of Appeals that has sanctioned the continuation of the aerial activities, a coterie of the airstrip's equally stalwart but disgruntled neighbors. We shall try our level best to end this land use civil war.

Robert V.L. Sharp, other individual neighbors, and Crozen Development Co., appellants, ask that we reverse a judgment of the Circuit Court for Howard County affirming the grant of a special exception by the Howard County Board of Appeals (the Board). The special exception permits the continued use of a private use/private ownership aircraft landing strip along an easement created by covenant on eight discrete parcels owned by the thirteen individual applicants. It also provides

for the storage of a maximum of three airplanes on the applicants' properties.

### QUESTIONS PRESENTED

Appellants have framed two queries for our consideration:

I. Is the holding of *Schultz v. Pritts*<sup>1</sup> properly applied when a Board of Appeals refuses to make any finding of fact regarding the uniqueness of adverse effects on vicinal properties of a proposed special exception use, and there is uncontroverted evidence of both adverse effects and unique adverse effects on the vicinal properties?

II. Did the lower court err when it sustained an agency decision which was expressly premised upon an erroneous application of the law?

For reasons we shall explain, we shall affirm the circuit court's judgment.

### PROCEDURAL PROLOGUE

In 1973, the then owners of the eight contiguous parcels of land in Howard County that are the subject of the instant special exception executed and recorded a Declaration of Covenants. The covenants created reciprocal easements on a 150 foot wide strip of land running across all of their properties for the purpose of creating a private air strip. We shall sometimes refer to the airstrip hereafter by the name, "Glenair," which is also how the Federal Aviation Agency (FAA) and the Maryland State Aviation Administration (MAA) identify it.

In August 1978, the owners of the eight properties sought a special exception to operate Glenair. After public hearings, the Board as then constituted denied the special exception, concluding that the proposed use would adversely affect vicinal properties. The applicants appealed that denial to the Circuit Court for Howard County. The circuit court remanded the case to the Board for reconsideration, in light of the

standard for evaluating the impact of proposed special exception uses enunciated in *Schultz v. Pritts*, *supra*, which had been decided since the Board's denial. We affirmed that remand in *Sharp v. Somerlock*, 52 Md.App. 207, 447 A.2d 500 (1982).

While the appeal in *Sharp v. Somerlock* was pending, one of the eight parcels of land subject to the covenants was sold. The buyers, Marvin and Mary Alice Schaefer, were opposed to Glenair. At one of the public hearings held before the Board in 1983 pursuant to the remand, the Schaeferes asked to be removed from the list of applicants for the special exception, and that their parcel of land be deleted from the petition. The Board granted the Schaeferes' request. It also granted the special exception on 20 September 1983. The Board, in applying its view of the rule of *Schultz v. Pritts* to the facts before it at that time, explicitly found and concluded that the protestants have failed to adduce evidence which demonstrates that granting the special exception use would result in adverse effects upon adjoining and surrounding properties unique and different from the adverse effects that would otherwise result from the location of a private aircraft landing and storage area anywhere within the R Zoning District.

The protestants, many of whom remain as appellants in the instant appeal, took umbrage and appealed. The circuit court affirmed the Board's action, and an appeal to this court followed. We reversed, holding that the Board did not have the authority under the Howard County zoning ordinance to grant the special exception petition because the Schaeferes' withdrawal from participation in the petition caused the amount of land proposed for the airstrip use to fall below the minimum required by the local ordinance. *Fiol v. Howard County Board of Appeals*, 67 Md.App. 595, 508 A.2d 1005 (1986). Nevertheless, we expressly declined to consider whether the Schaeferes' withdrawal violated the 1973 Declaration of Covenants.

1. 291 Md. 1, 432 A.2d 1319 (1981).

Following our decision in *Piot*, the remaining applicants sought an injunction to compel the Schaefer to join the special exception petition in compliance with the Declaration of Covenants. The circuit court granted the injunction and ordered the Schaefer to execute the petition. The Schaefer appealed.

In an unreported opinion, we construed the language of the Declaration of Covenants and determined that the Schaefer's withdrawal violated the covenants. *Schaefer v. Levy*, 74 Md. App. 732, 737 (1988). As a result, the petition was considered anew by the Board. Evidentiary hearings were held on 8, 15, 22, and 26 September and 8 November 1988. On 9 March 1989, the Board again granted the special exception for Glenair, but not without dissent. A three member majority of the Board joined in a Decision and Order approving the petition subject to a list of conditions. Among the required findings of fact made by the Board majority in its Decision appears the following statement of the Board's understanding of how *Schultz v. Pritts* applies, or does not apply, to granting the special exception:

The Board finds that the use will not adversely affect vicinal properties.

In its regulations the Zoning Board has allowed airfields to be located in R (Rural) Zoning Districts, subject to the satisfaction of certain conditions noted in the Zoning Regulations. The Zoning Board also permits residential development on minimum three-acre homesteads in this category of zoning district. Thus the Zoning Board must have envisioned the possibility that these two types of uses, a private airfield and residences, may be in some proximity to each other. Given this presumption, the Board must determine whether or not vicinal property owners are affected in a manner beyond that contemplated by the Zoning Board, that is, adversely. If the Board's decision would be in the affirmative, then, under the doctrine of *Schultz v. Pritts*, the Board would decide whether or not this adverse effect on these vicinal properties would be unique and different from the adverse effects that would otherwise result from the

location of a private aircraft landing and storage area anywhere within the R Zoning District. Since the Board finds that the proposal, as set forth in the Petition and Noise Control Plan, will not adversely affect vicinal properties, it does not need to decide the issue that must be addressed under *Schultz*.

The two member Board minority<sup>2</sup>, in a classic riposte, cast its Dissent, in part, as a contrary view of the interplay of *Schultz v. Pritts* and the obligation of the Board to evaluate the perceived adverse effects presented by the evidence before it:

The inherent adverse effects of the use are uniquely intensified in this particular location. While adverse effects are inherent in the proposed special exception use, (e.g. negative impact on property values evidenced by the reduction in tax assessments and in the noise effects on the peaceful enjoyment of homes), this particular area of the County's Rural (R) zone has a noticeably higher concentration of existing and proposed development, a significant number of approved special exception uses, and three (3) public schools in the immediate area. Thus, the Petitioners have failed to meet the standards as elucidated in *Schultz v. Pritts*. (citation omitted).

Appellants noted an appeal to the circuit court. In addition to contesting the merits, they requested that the assigned judge in the circuit court recuse himself because he had, while practicing law in 1973, drafted the Declaration of Covenants that served as the foundation for the establishment of Glenair. The judge declined to recuse himself and proceeded to affirm the Board's grant of the special exception.

Appellants then took an appeal to us. In an unreported opinion, a different panel of this court held that it was not an abuse of discretion for the circuit court judge to refuse to recuse himself, that the Board majority's interpretation of

2. Which included a member of the 1983 Board that had apparently unanimously granted a time-conditioned special exception for Glenair.

*Schultz v. Pritts* was appropriate, and that the Board's decision be affirmed. *Robert V.L. Sharp, et al. v. Howard County, Maryland, et al.*, 87 Md.App. 806, 814 (1991).

Continuing to spin the judicial roulette wheel, appellants took their case to a higher court. In *Sharp v. Howard County*, 327 Md. 17, 607 A.2d 545 (1992), the Court of Appeals reversed our decision on the ground that the circuit court judge should have recused himself.<sup>3</sup>

The matter was remanded to the circuit court where a different judge, on 16 November 1992, affirmed the Board's decision and observed, with a trace of prophecy and futility, that

On remand, Appellants press anew their argument that the Howard County Board of Appeals (the "Board") did not correctly apply *Schultz v. Pritts*, 291 Md. 1 [432 A.2d 1319] (1985) [ (1981) ] in granting a special exception for a private use-private ownership aircraft landing and storage area in an R (Rural) Zoning District.

\* \* \* \* \*

Whether to grant a special exception for the aircraft landing and storage area has been in litigation in one form

3. The case *sub judice* might also present on its face a potential application of the law of the case doctrine. Appellees have not asserted this issue in their briefs or at oral argument. It was not addressed or decided by the circuit court. Accordingly, we shall not decide it. Were we to consider this point, we would find no merit in it.

The unreported opinion of the Court of Special Appeals filed in 1991 addressed the very issue concerning *Schultz v. Pritts* that appellant raises anew in the case *sub judice*. There are no additional facts before us than were before the panel that addressed and disposed of that issue in that appeal. Although the Court of Appeals was thereafter petitioned by appellants to accept *certiorari* on both the recusal and the *Schultz v. Pritts* questions, the Court specifically limited its grant of *certiorari* to the recusal issue.

We are persuaded, however, that the law of the case doctrine as to the *Schultz v. Pritts* issue should not be applied to the instant appeal. The Court of Appeals reversed, albeit on another ground, the prior judgment of the Court of Special Appeals. This had the effect of permitting not only the circuit court, but ourselves, to freshly confront appellants' arguments regarding the Board's understanding of and adherence to *Schultz v. Pritts*.

or another for decades, and this Court has no illusion that this Order will end the string of appeals and remands. However, this Court is satisfied that the Board's decision was supported by substantial evidence, was within its discretion to reach, and did not violate any applicable legal standards.

This Court has also considered Appellants' alternative request that this Court remand the case to the Board for additional proceedings and findings to insure that the Board has correctly applied *Schultz*. While arguably a further remand may well produce a more perfect and exquisite determination, this Court believes that the Board's findings and decision clearly express its intentions.

The instant appeal inexorably followed.

#### SUMMARY OF THE RELEVANT EVIDENCE BEFORE THE BOARD

The subject property of Glenair, inclusive of the airstrip, is comprised of 45 acres. Glenair is located on the east side of Sharp Road, about 1700 feet north of Shady Lane, in the Glenwood area of Howard County. The 45 acres is comprised of eight contiguous parcels, each about 5.5 acres in size. The parcels, sited side-by-side in a east-west direction, form a rectangle. The grass air strip is located within an easement along the southerly portions of all of the parcels. The easement is 150 feet wide and 3200 feet long. The actual aircraft runway within the easement is 40 wide and 2178 feet long. The ends of the runway are 500 feet from both the east and west boundaries of the subject property. The south edge of the runway is 104 feet from the southerly edge of the subject property. Among the reasons given by the applicants in the special exception application for the selection of the subject property as the site of Glenair was that it is higher than the surrounding land. The average elevation of Howard County piedmont land is 450 to 500 feet above sea level; this site is 590 feet above sea level, and there are no hills or trees in the surrounding area to pose obstructions



during landings and takeoffs. The elevation difference keeps airplanes higher above the surrounding land and buildings during landings and takeoffs.

The special exception application requested permission to continue a private aircraft landing and storage area pursuant to § 126 F.2.a. of the Howard County Zoning Ordinance. Two airplanes had been stored on the subject property since 1983. According to the applicants' records, since 1983 there had been 341 flights from Glenair, or about one flight (takeoff and landing) every 5½ days on the average. The applicants also produced testimony and internally-generated records regarding occasional landings or overflights by planes not based at Glenair or involving invited guests. Where identification of the uninvited miscreants was obtained, applicants attested to their efforts to warn the pilots and ward-off repeat episodes.

Glenair's operations are subject to a noise control plan approved by the MAA. See generally COMAR 11.03.03. This plan, when combined with mandatory FAA regulations, obligated Glenair's legitimate users: (a) not to fly over the nearby Gleneig High School, Glenwood Middle School, and Bushy Park Elementary School at any altitude; (b) not to engage in any landing patterns from the north where the high school is situated; (c) not to fly over adjacent residential areas at an altitude of less than 1000 feet or at more than fifty percent of an aircraft's maximum engine power; and, (d) to avoid overflight of adjacent residences during takeoff until reaching an altitude of 1000 feet. The noise control plan also calculated and mapped noise impact contours on the surrounding properties that projected noise levels from the operations of Glenair would not exceed the State-prescribed maximum level for land zoned for single family, detached residences. Compliance with the decibel limits established in the plan was asserted through anecdotal testimony of applicants and some neighbors, as well as a noise measurement study of aircraft takeoff, landing, and taxi operations conducted by one of the applicants, an electrical engineer by occupation. He characterized the peak noise level as comparable to that of a riding lawn mower, but of a much shorter duration.

An expert in real estate appraising opined, from a study he made of Glenair, another nearby private airstrip, and surrounding areas, that there had not been any impact on property values as a result of Glenair's continued operations.

The applicants also produced evidence of the relative safety of general aviation activities nationally and Glenair specifically. Reference was made to FAA and Aircraft Owners and Pilots Association (AOPA) statistics in support of this contention. Mr. Albert J. Selby, Director of Regional Aviation Assistance of the MAA, opined on the record with regard to Glenair:

It is a safe airport. Among all the licensed and registered grass airstrips in the State, Glenair is one of the finest and safest with excellent approaches and a well maintained, lighted, level and solid turf landing strip. The orientation of its landing strip into the prevailing wind, its elevation being higher than the surrounding terrain, its location in open, lightly developed countryside all combine to make this strip one of the outstanding private airstrips in the State.

Because *Schultz v. Pytts* was so keenly on everyone's minds, the opponents' testimony and demonstrative evidence were singularly focused on demonstrating their thesis that the particular facts and circumstances attendant to Glenair caused adverse effects on vicinal properties that were unique to this neighborhood as opposed to elsewhere in the R (Rural) Zone in Howard County. To this end, appellant Robert V.L. Sharp testified that the closest boundary of his property was 600-650 feet west of the westerly end of the airstrip, and that his land was "higher than the runway."<sup>4</sup> As a consequence of this

4. The Technical Staff Report of the Office of Planning and Zoning for Howard County, dated 12 August 1988 (Staff Report), described the subject property and its airfield as being "on a ridge line that places them slightly above surrounding properties to the north, west, and south."

Although appellants also argue in their brief that they produced evidence that the adjacent properties east of the subject property and the runway were also situated at a higher elevation, it is not at all apparent from the record extract that that is so. The testimony of the opposition's consultant, former FAA employee Clyde W. Pace, and opposition Exhibit No. 29 which he prepared, do not clearly establish



difference in elevation and some unspecified "grading into the hill" attributed to the applicants, he could not see aircraft sitting on the ground preparing to take off to the west. His first view was when they "pop up from the west end." He found this activity noisy and "at times scary." He related an episode occurring on Saturday morning, 20 May 1984, when he was bush-hog mowing a portion of his property on a farm tractor. He had his back to the airstrip as he was slowly mowing. A plane that he subsequently recognized as one stored at Glenair apparently took off to the west and startled him when it got close enough to be heard over the masking noise of the tractor and mower. When he heard the sudden noise of the plane, his body involuntarily jerked violently and he struck his leg on the tractor, thereby curtailing his activities for the rest of the morning while he applied ice to his injured leg.

Clyde W. Pace, a former FAA employee offered by appellants as an expert, visited the site and testified that certain structures or objects in the vicinity of the airstrip might be contrary to certain FAA airport standards binding on airports that receive federal aid. Glenair receives no such subsidy and, hence, these standards were, at best, apparently deemed by the Board to be guidelines or suggestions in the special exception case. The potential obstructions within the so-called "transition slopes" adjacent to the airstrip identified by Mr. Pace were: "some trees" 20 feet tall on an unspecified plot of land potentially within a so-called southerly side transition slope; a 60 foot tall metal tower located "perhaps 100 feet" east of the easterly edge of the runway; and, a powerline 500 feet west of the westerly end of the runway.

The Board heard additional evidence concerning the arguably unique locational features of the airstrip and its vicinal properties. Three schools are located in the vicinity of the airstrip. It was asserted that this is the only place in the R

\_\_\_\_\_ this point. Moreover, appellants' reliance on the undecipherable excerpt of a 600 scale topographic map contained in the Staff Report to prove this point is a "reach."

(Rural) District that has three schools in such close proximity to one another. In addition, the only public high school within the R (Rural) District is one of these three nearby schools. The location of the schools makes the vicinal properties very appealing to home buyers.

Evidence of ongoing residential development occurring within a one mile radius of the airstrip was offered to support appellants' contention regarding the unique character of the neighborhood. Twenty-two subdivision record plats, encompassing over three hundred acres of development, had been approved and filed. Moreover, five proposed residential subdivisions, encompassing over four hundred additional acres of development, including a large subdivision that abuts the east end of the airstrip, were then in the approval and recordation process. The tax maps of the surrounding area, received in evidence before the Board as Protestant's Exhibit 10, reflected the residential development in the vicinity of the airstrip.<sup>5</sup> By contrast, the area to the west of the subject property was less developed.

Furthermore, appellants drew the Board's attention to the approval of eleven special exceptions, also within a one mile radius of the proposed airstrip. Robert V.L. Sharp, who compiled the list of the special exceptions, testified he could find no other R (Rural) District in the County with such a concentration of special exceptions within a one mile radius. These approved special exception uses were residential in nature, and included a nursery school, three churches, three craft shops, a hair salon, a riding stable, a two family dwelling,

5. This was not, however, a compendium of novel information. The Staff Report obviously perceived the growth potential of the area when, in its "Evaluation and Conclusions" section, it observed:

The infrequent use of the landing strip will not necessarily hinder or discourage the use of adjacent land since these sites, if subdivided, will be at least 3 acres in size. Any significant increase in airfield use over present levels of activity seems unlikely given that the airfield is private and only three aircraft would be stored there. However, if subdivision occurs and houses are constructed, the presence of the airfield may require revision of the submitted Noise Control Plan to prevent any adverse impacts on nearby properties.

and a parking area for school buses that service the three nearby schools.

The thrust of appellants' evidence with regard to the proximity of residential development, schools, and the special exception uses, besides endeavoring to distinguish the area from other R (Rural) Districts that might be less developed or have less development potential, was to demonstrate receptors for the actual adverse effects from Glenair's operation based on noise and safety concerns. As to noise, several witnesses, in addition to Robert V.L. Sharp, attested to being annoyed, irritated, or otherwise having the enjoyment of their property intruded upon by Glenair-related air traffic or unidentified flights that they associated with the existence of Glenair. Witnesses who addressed safety concerns conjured reports of military, commercial, and general aviation accidents, some of which they had witnessed and others repeated from hearsay, that had resulted in human tragedy and property damage. The spectre of a replication of such an event in the area of Glenair was visualized by the opponents.

Appellants' other assault on the special exception application was aimed at a perceived adverse effect on property values. Testimony of reductions in tax assessments on two vicinal properties was related to the presence of the airstrip. Bruno Reich, one of the applicants whose property was subject to the Declaration of Covenants, had requested and received a reduction in the assessment on two of the sub-lots of his parcel because the restrictions of the easement creating the airstrip precluded the erection of buildings on the sub-lots that fell within the easement. The assessment on the balance of Reich's parcel was apparently unaffected by the existence of the airfield. One of the opponents, Charles Sharp, had obtained a 10% reduction in the fair market value of his property due to "airport factors." This reduction, denied him by the local Supervisor of Assessments & Taxation, was achieved only after the Maryland Tax court sustained a decision apparently by the local Property Tax Appeals Board in Mr. Sharp's

favor after the Supervisor appealed.<sup>6</sup> The Board, in its questioning of the applicants' appraisal witness, Walter Reiter, also elicited an opinion that an airfield would likely be a factor that potential home buyers would consider as mitigating against purchasing a home in the vicinity of the airfield.

The Board, in its 9 March 1989 Decision and Order conditionally granting the special exception, found as follows with regard to the appellants' opposition evidence:

The protestors' concerns about adverse effect fall into two categories—noise from the operation of the airplanes, and their fears that an airplane will crash onto the ground, potentially on a house or one of the nearby schools.

Addressing the possibility of an airplane crash, while the prospect may present a frightening vision, the statistics on the probability of such an occurrence submitted by the Petitioners illustrates the unlikelihood of this happening. Further, in reference to the nearby schools, the Noise Control Plan prohibits overflights of the three schools, so the possibility of a crash on one of the schools seems even less likely. Therefore, the owners of vicinal properties are not adversely affected by what is a remote possibility of one of the two or three planes crashing.

The noise generated by these three planes, to which the Board will limit this operation to 7:00 a.m. to 10:00 p.m., is not of a degree sufficient to constitute an adverse effect upon the vicinal property owners. While any individual homeowner might not like the sound of an airplane's engine near his or her home, the operation of the three planes that may be stored on the airstrip do not rise to the level of adverse effect as contemplated by the Zoning Regulations.

6. It is unclear that Mr. Sharp sought the reduction because he felt the airport's operation adversely affected the resale value of his property. During his cross-examination, the following exchange took place between the applicants' attorney and Mr. Sharp regarding his meeting with the local Supervisor who denied his reduction initially:

Q. Because, he told you when he denied you, that there was absolutely no impact at all on prices caused by this airport.  
A. I did not appeal the process due to prices.

However, the Board is changing the beginning of the hours of operation from 6:00 a.m. to 7:00 a.m. to ameliorate the impact of any noise upon adjacent landowners.

As an amplification of this attempt of showing adverse effect, many of the protestants have recounted instances of planes buzzing certain locations, and planes manifesting excessive noise. There was no evidence that these planes were any of those operated by the Petitioners.<sup>17</sup> Obviously the Petitioners cannot be held responsible for the actions of airplanes over which they have no control. This also applies to those instances where unauthorized planes or helicopters land at Glenair. If the Petitioners follow the Noise Control Plan, which they must, they will see to it that Section 15, *VISITING AIRCRAFT*, is carried out. This should minimize the number of landings of unauthorized aircraft.

As an adjunct to the protestants' inclusion of all incidents of small planes acting inappropriately, they also would have the Board consider their contention that the mere presence of the airport constitutes an attractive nuisance, drawing numerous disturbing flights in the area. This theory could apply to any location of a private airport. Presumably the Zoning Board was aware of the nature of private airports and any attraction they might have for other planes. Further, the instances recounted by the protestants do not rise to the level of adverse effect from the use.

The Board did not, in its Decision and Order, render any finding or conclusion regarding the appellants' argument and supporting evidence as to Glenair's effect, if any, on vicinal property values, apparently viewing it as an inherent consequence of the operation of a private airstrip regardless of where it was located in the R (Rural) District in Howard County.

7. Apparently to the contrary, the 20 May 1984 episode recounted by Robert V.L. Sharp involved a plane with identification number "N735PW" which Mr. Sharp recognized as being one that was stored on the parcel owned by Enos C. Levy, one of the applicants.

#### ANALYSIS

Appellants contend that the Board did not properly apply the standard announced in *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981). They claim that the Board erred when it refused to make a finding of fact regarding the uniqueness of adverse effects on vicinal properties, in the face of uncontroverted evidence of both adverse effects and unique adverse effects on the vicinal properties. Relying on Anderson, *American Law of Zoning*, § 21.06, appellants suggest that all special exception uses generate some adverse effects, apparently regardless of where they might be located within a zoning district or category. The full impact of these adverse effects is tempered, in the first instance, by the express conditions placed on them and the findings required to be made before they can be approved by the legislative body, and, in the final analysis, by the application of the *Schultz v. Pritts* standard to the facts and circumstances of each individual petition as determined by the appropriate administrative agency. In that final analysis, appellants postulate that *Schultz v. Pritts* can only be correctly applied if the agency, the Board in this case, first identifies the universe of potential adverse effects inherently associated with the abstract special exception use (which the legislative body was presumptively aware of when it permitted the use only after the grant of a special exception). With those inherent adverse effects in mind, the Board must then analyze which of the actual adverse effects on adjoining and surrounding properties demonstrated in the particular application exceed, in kind or degree, the inherent adverse effects due to the proposed location of the subject property of the application.

The dispute over the interpretation and application of *Schultz v. Pritts* in the instant case stems, it seems to us, from two sources: (1) the Board unnecessarily courting a reversal of its action by not casting its Decision and Order in language more precisely parallel to the language of *Schultz*; and, (2) the appellants' interpretation of the holding of *Schultz* as if it were the atomic chart of elements from which a formula for divining inherent and peculiar adverse effects could be derived. A

close examination of how the Court arrived at *Schultz v. Pritts*, and those cases construing and applying *Schultz*, will reveal the bases for these two observations.

The late Judge Rita Davidson painstakingly traced the nature of special exceptions in Maryland as she developed the foundation for the Court's ultimate holding in *Schultz*.

The general purpose of adequate land planning is to guide and accomplish the "coordinated, adjusted, and harmonious development of [a] jurisdiction ... which will ... promote ... [the] general welfare." Zoning is one of the important elements of land planning that is used to further this purpose.

\* \* \* \* \*

Zoning provides a tool by which to establish general areas or districts devoted to selected uses. Indeed, the very essence of zoning is the territorial division of land into use districts according to the character of the land and buildings, the suitability of land and buildings for particular uses, and uniformity of use.

Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). *In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district.*

*Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the*

*beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and schools generally are designated as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.*

*When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. For example, funeral establishments generally are designated as special exception uses. Such uses may not be developed if at the particular location proposed they have an adverse effect upon a factor such as traffic because the legislative body has determined that the beneficial purposes that such establishment serve do not necessarily outweigh their possible adverse effects.*

More particularly, by definition, a permitted use may be developed even though it has an adverse effect upon traffic in the particular location proposed. By definition, a requested special exception use producing the same adverse effect at the same location must be denied. Thus, by definition, a church may be developed even if the volume of traffic that it generates causes congestion and unsafe conditions at the particular location proposed. By definition, however, a special exception use for a funeral establishment producing the same volume of traffic and, therefore, the same congestion and unsafe conditions at the particular location proposed must be denied. It is precisely because a

permitted use may be developed even though it may have an adverse effect on traffic at the particular location proposed, whereas a special exception use may not, that to grant a requested special exception use on the ground that it generates traffic volume no greater than that generated by a permitted use is logically inconsistent and in conflict with previously established standards. (citations and footnotes omitted) (emphasis in original and supplied).

291 Md. at 19-22, 432 A.2d 1319.

Judge Davidson equally patiently, but more succinctly, summarized the "frequently expressed" applicable standards for judicial review of the grant or denial of a special exception:

✓ The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. ✓ The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

✓ Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the

Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. (citations omitted; emphasis in original).

291 Md. at 11-12, 432 A.2d 1319.

The nature of the requisite adverse effect that would compel denial of a special exception was explored in *Schultz* in the discussion contrasting *Deen v. Baltimore Gas & Elec. Co.*, 240 Md. 317, 214 A.2d 146 (1965) (where the zoning body approved a special exception for construction of above-ground high tension transmission lines) with *Anderson v. Sanger*, 23 Md. App. 612, 329 A.2d 716 (1974) (where the zoning body denied a special exception for a funeral home). In *Deen*, B G & E's request involved traversing a rural area with its service lines. The board of appeals, in approving the special exception, concluded that, pursuant to the Baltimore County Zoning Regulations, the requested use would not be "detrimental to the health, safety, or general welfare of the locality involved." In the face of an appeal by opposing land owners from the rural area to be traversed, both the circuit court and the Court of Appeals affirmed. The Court observed in its opinion: "Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality 'which could be reasonably anticipated in the normal course of its development.' This factor was without relevance in this case, because there was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in

*such an area for the above ground location of high tension wires.* The only evidence as to future conditions was testimony revealing the possibility of future residential development of this land but such a possibility alone does not come close to showing a future deleterious effect upon the public health, safety or general welfare." *Deen*, 240 Md. at 330-331, 214 A.2d 146. (emphasis in original).

291 Md. at 12-13, 432 A.2d 1319.

In *Anderson v. Sawyer*, the requested special exception use was for a funeral home in a residential zone. In addition to traffic congestion, the protestants mounted an argument that the mere presence of a funeral home would adversely affect property values. The Baltimore County zoning body succumbed to the protestants' arguments and denied the application, finding it would "be detrimental otherwise to the general welfare of locality involved." The applicants appealed to the circuit court, which reversed the board's denial. The protestants appealed to the Court of Special Appeals. We affirmed the circuit court. *Schultz* noted that, in so doing, we observed with regard to the allegations concerning adverse effects on property values:

"There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature in prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and as constitutionally sound. But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the com-

munity. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.

*The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all."* *Anderson*, 23 Md.App. at 624-25, 329 A.2d 716 (emphasis in original) (citations omitted).

291 Md. at 13-14, 432 A.2d 1319.

Judge Davidson concluded in *Schultz* that *Deen* and *Anderson*

establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts

and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

291 Md. at 15, 432 A.2d 1319.

From the foregoing analysis, the holding of *Schultz v. Pritts* succinctly followed:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

291 Md. at 22-23, 432 A.2d 1319.

Not surprisingly, the first case to discuss *Schultz v. Pritts* involved Glenar. The late Judge Thomas Hunter Lowe, delivering the opinion of the Court of Special Appeals in *Sharp v. Somerlock*, *supra*, endorsed the trial court's view of *Schultz's* significance:

the new test was whether the proposed use would "have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone." (citation omitted).

52 Md.App. at 210, 447 A.2d 500.

Favorably referencing the trial judge's words focusing the Board on its task pursuant to *Schultz*, Judge Lowe endorsed the position that

[w]hat the Board of Appeals must consider is whether the use contemplated by the subject petition would have adverse effects other than those adverse effects that would be

caused by the existence of an airport meeting the applicable standards in any other part of the R zone.

52 Md.App. at 210, 447 A.2d 500.

He added his own admonition that the Board, on remand, ought to focus on the testimony of one Nancy Adams, which he asserted "classically exemplified the *Schultz* criterion of a particular adverse effect." Before the Board, Ms. Adams had testified that she purchased a 107-acre farm directly across Sharp Road from the Sharp Farm, and partially moved there in December, 1978, unaware of the petition for an airstrip or that a demonstration was scheduled to be conducted. She purchased the farm to train thoroughbred racehorses, mainly for Maryland tracks. Adams testified that on the morning of the demonstration, she had 15 horses in the lower pasture when a plane flew in over her barn, looking as if it "was going to crash into the hill." She said her horses are very high-strung animals and that they began going "crazy" in the field. She feared some might break through the fences, because they were running wildly through the fields trying to get away from the noise. She had 51 horses at that time, and some of them were with foal, including one which was insured for \$100,000.00. Adams testified to having observed high-strung racehorses injure themselves when excited, and said she had never seen her horses as excited as they were when the airplanes flew over during the takeoffs and landings for the aerial demonstration.

*Id.* at 207-08, 447 A.2d 500.

For our present purposes, it is not important that Ms. Adams' testimony did not, on remand, prove to be all that Judge Lowe had summarized from her prior appearance before the Board.<sup>8</sup> What is significant is that we recognized that the type of

8. It has been suggested by the applicants that Ms. Adams' testimony in 1978-79 was not truthful. She failed to appear before the Board when it conducted hearings following the remand directed in *Sharp v. Somerlock*.



alleged localized impact represented by her testimony had to be considered by the Board in light of the *Schultz* standard.

The next meaningful consideration of *Schultz* is found in *Board of County Commissioners for Cecil County v. Holbrook*, 314 Md. 210, 550 A.2d 664 (1988). Judge Cole, writing for the Court, summarized *Schultz* as teaching that

where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied. Furthermore, if the evidence makes the issue of harm fairly debatable, the matter is one for the Board's decision, and should not be second-guessed by an appellate court.

314 Md. at 217-18, 550 A.2d 664.

*Holbrook* involved a special exception request for the permanent establishment of a mobile home in an agriculturally zoned and sparsely developed area of Cecil County. The mobile home, which had been placed on the applicant's property originally as a temporary structure, was sited in a clearing near a boundary with the property of a protestant. The protestant's home, newly constructed before the mobile home owner sought permanent approval for his dwelling, was situated 80-150 feet away from the mobile home, within clear lines of sight from each other. There was no meaningful landscaping or vegetation between the two structures that would obscure the view. The special exception applicant's property, comprising 2.8 acres, was densely wooded, except for the clearing where the mobile home was located and the area between it and the neighbor's boundary line.

The protestants, with whom the zoning body agreed, decried the debilitating effect of the mobile home on the value of their properties. The zoning body denied the special exception finding the proposed use would "otherwise substantially diminish adjacent property values" and that, under *Schultz*, it would "create significantly greater adverse effects in this location

that were it located in other areas in the zone." The circuit court affirmed the zoning body's denial. We, on the other hand, reversed the circuit court, basing our holding on the premise that regardless of a mobile home's particular location within a zone, its negative impact on adjacent properties would remain the same. In reversing us and affirming the circuit court and zoning body, the Court found

no cause to question the Board's conclusion that the mobile home, in this particular location, would impair neighboring property value to a greater extent than it would elsewhere in the zone. Countless locations exist within the zone, and indeed, within *Holbrook*'s own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values. If, for example, trees or topography hid the mobile home from the view of the neighboring property owners, there would remain, as the Board's counsel conceded, absolutely no grounds for denying a special exception permit. The Court of Special Appeals failed to acknowledge these potential scenarios.

\* \* \* \* \*

At any rate, in light of the mobile home's high degree of visibility in this particular location, its proximity to the Peters's home, and the markedly disparate values of the *Holbrook* and Peters residences, we hold that the Board reasonably concluded that the permanent presence of the *Holbrook* mobile home would create significantly greater adverse effects in this location than were it located elsewhere in the zone.

314 Md. at 220, 550 A.2d 664.

Thus, the Court construed the relative lack of vegetative screening between the two structures and the apparently level topography as sufficient localized circumstances that rendered the adverse property value impact, arguably always inherent in this particular use, uniquely adverse.

The most recent revisiting of *Schultz*'s teachings is found in *People's Counsel v. Mangione*, 85 Md.App. 738, 584 A.2d 1318 (1991). *Mangione* addressed the denial by the Baltimore



County Board of Appeals of a special exception for a 240 bed nursing home to be located on residentially-zoned land. The subject property of 4.0 acres was located interior to an area of existing single family homes. Vehicular access to the nearest major road, which was one block away, was via residential subdivision streets. In its discussion, the board identified the areas of uncommon problems created by the proposed use: the size of the proposed building and adjacent parking (100 spaces) would "overwhelm and dominate" the surrounding residential community, the project would "exacerbate an already worsening storm water runoff situation within this community," and the traffic would "overtax" the residentially-sized community roads. The board therefore concluded that the applicant had failed to meet his burden to persuade it that the proposed use would not be "detrimental to the health, safety, or welfare of the locality."

After liberally quoting from *Schultz* and *Holbrook*, much as we have done here, Judge Catnell, writing for us, concluded Before the Board were various facts and circumstances which, we believe, satisfy the *Schultz* standard of particular adverse impact. The Board, under the *Schultz* standard, reviewed the evidence for the required particular adverse impact. There was testimony that the proposed convalescent home would sit on the prominent or dominant terrain above the neighborhood, which would block out light from the west; and with prevailing breezes from the west, would generate odors from the central kitchen as well as from the dumpster. There was testimony concerning the effects of the development along the York Road corridor and the erosion created by the development and storm water runoff. There was testimony concerning the effects of the intrusion of the project into the residential neighborhood presently existing around that location. There was testimony about small arterial streets whose only access to York Road from the community was by way of Greenridge Road, and that the narrow, winding nature of those streets, with the increased traffic, would jeopardize the safety of the children playing in the streets. Furthermore, there was testimony

concerning the overflow of contaminated medical waste and storm water management.

The Board, as finder of fact, said it was "obligated to judge the credibility of each witness and apply each Board member's own knowledge, developed through experience and training, to the evidence presented." In sum, the Board concluded that the proposed project would "overwhelm and dominate the surrounding landscape," and that it would represent "the deepest intrusion into the residential community of Dulaney Valley." The Board found that the project would "clearly exacerbate an already worsening storm water runoff situation" within that community. Further, the Board was unconvinced that the "traffic generated by the home's employees and visitors would not overtax an interior community road system designed to accommodate residential traffic."

\* \* \* \* \*

Given those facts and circumstances, we believe there was sufficient showing of particular adverse impact as required under *Schultz*.

#### Conclusion

"The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan." *Schultz*, 291 Md. at 11 [432 A.2d 1319]. (Emphasis in original.) We conclude that the Board's decision, denying the special exception, was not arbitrary and capricious. (footnote omitted; emphasis in original).

85 Md.App. at 751-53, 584 A.2d 1318.

[1] Returning to the parties' contentions in the case *sub judice*, we decline their invitation to resolve their debate as to whether all special exception uses necessarily possess inherent adverse effects, regardless of where they may be sited in the relevant zoning district(s). That some, though not necessarily all, of the universe of special exception uses may have *possible*

levels would not exceed the State's maximum threshold for property zoned to permit the development of single family, detached homes. The Board also had before it testimony from some neighbors, though contradicted by other neighbors, that Glenair's noise did not bother or inhibit them in the enjoyment of their properties. The Board could, and did, rationally ignore impacts from aircraft not associated with Glenair or where the complainant could not be actually linked to a Glenair plane or an invited guest's craft.

The Board also resolved in the applicants' favor the only significant conflict in the evidence concerning noise that clearly exemplified an alleged *Schultz*-type particularized adverse effect. The applicants contended in the supporting documentation to their application when filed that Glenair was "higher than the surrounding land." They continued from this premise to assert that "[t]he elevation difference keeps airplanes higher above the surrounding land and buildings during landings and takeoffs." Indeed, Mr. Selby of the MAA stated that Glenair's elevation was "higher than the surrounding terrain." The Technical Staff of the Howard County Office of Planning and Zoning, in its report and recommendation on the special exception application, also concluded that the subject property and its airfield were "on a ridge line that places them slightly above surrounding properties to the north, west, and south."

To the contrary, at least one opposition witness, who remains an appellant in this case (unlike Ms. Adams), Mr. Robert V.L. Sharp, testified that the closest boundary of his property was 600-650 feet west of the westerly end of the Glenair airstrip, and that his land was "higher than the runway." He attributed to this difference in elevation, and to some unspecified "grading into the hill" which he claimed was accomplished by the applicants, some role in the episode he claimed to have experienced on 20 May 1984 when a plane identified with Glenair startled him with its noise during takeoff as it suddenly appeared over him. The airplane noise was startling even over the noise generated by the tractor pulling a bush-hog mower which Mr. Sharp was driving. The noise caused a reflexive spasm and an injury (although appar-

ently not a serious one) to his leg. There was also some evidence introduced through the opposition witness, Clyde W. Pace, that seemed to challenge whether the vicinal properties were at a higher or lower elevation than Glenair. In addition, the opponents presented documentary evidence in support of their contention that there were other expanses of R-District land in Howard County that did not have the elevation difference that they contended contributed to particular adverse noise effects in Glenair's case.

The Board, whose job it is to resolve such conflicts, has done so. That topography and distance play roles in exacerbating or ameliorating noise perception is a physical fact. See *generally* COMAR 11.03.03 (regulations promulgated by State Department of Transportation, State Aviation Administration, for its statewide Airport Noise Control Program). The Board did not accept Mr. Sharp's characterization of the relative elevations, and assigned no significance to his single episode from 1984, in the face of the overwhelmingly more precise, current, and empirical evidence to the contrary.

[4] The function of a zoning board is to exercise discretion (the discretion of experts in their particular field) in deciding matters brought before it. We shall not substitute our judgment for that of the Board when, as here, it was acting within its discretionary range. *Enviro-Gro v. Boekelmann*, 88 Md. App. 323, 385, 594 A.2d 1190, cert. denied, 325 Md. 94, 599 A.2d 447 (1991); *B.P. Oil v. County Board of Appeals*, 42 Md.App. 576, 577, 401 A.2d 1054 (1979).

*Cogito obesa cantavit in hoc lis (I think the Wagnerian soprano has sung in this case).*

JUDGMENT AFFIRMED; APPELLANTS TO PAY THE COSTS.

*Goodie*  
#1



## REAL PROPERTY SYSTEM

BALTIMORE COUNTY

## PRIMARY SCREEN

DISTRICT: 02 ACCT NO: 1600008427

SUBDIST:

## OWNER NAME / MAILING ADDRESS

SCHLOTTMAN RICHARD H  
 SCHLOTTMAN PATRICIA A  
 3949 MCDONOGH RD  
 RANDALLSTOWN

MD 21133

DEED REF 1) / 8174/ 507  
2)

PLAT REF 1) 36/ 5

EXEMPT STATUS/CLASS  
0 000

PRINCIPAL  
 RESIDENCE  
 YES

## PREMISE ADDRESS

3949 MCDONOGH ROAD

TOWN GEO ADVAL TAX LAND COUNTY  
 CODE CODE CODE CLASS USE USE  
 000 80 000 R 04

## LEGAL DESCRIPTION

349 S LESAN ROAD  
 CENTURY 21 AT RANDALLST

MAP GRID PARCEL SUB-DIV PLAT SECT BLOCK LOT  
 77 2 1274 2 D 2

TRANSFERRED FROM: DER TELL BIN

05/15/89 \$170,000

PRESS: &lt;F1&gt; VALUES SCRN

&lt;F3&gt; SELECT NEXT PROPERTY

## MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION

09/20/95

## REAL PROPERTY SYSTEM

BALTIMORE COUNTY

## VALUES SCREEN

DISTRICT: 02 ACCT NO: 1600008427

SUBDIST:

OWNER NAME: SCHLOTTMAN RICHARD H

TOWN CODE: 000

	BASE VALUE	CURRENT VALUE AS OF	PHASE-IN VALUE AS OF	PHASE-IN ASSESSMENTS AS OF	ASSESSMENTS AS OF
LAND :	31,030	01/01/95 31,030	07/01/96	07/01/95	07/01/96
IMPT :	105,570	107,770			
TOTAL :	136,600	138,800	138,066	54,930	55,220

PREF LAND: 0 0 0 0 0

PRIMARY STRUCTURE DATA  
 YEAR BUILT ENCLOSED AREA  
 1978 2,336 SF

## PARTIAL EXEMPT ASSESSMENTS

	CODE	07/01/95	07/01/96
COUNTY	000	0	0
STATE	000	0	0
MUNICIPAL	000	0	0

LAND AREA: 7,030.00 SF

PRESS: &lt;F1&gt; PRIMARY SCRN

&lt;F3&gt; SELECT NEXT PROPERTY

*People's Council*  
 #2

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

*People's Counsel  
#4*

DATE: September 26, 1995

TO: Peter Max Zimmerman  
People's Counsel

FROM: Stephen E. Weber, P.E., Chief  
Division of Traffic Engineering *SEW*

SUBJECT: Petition for Special Exception - Richard H. Schlottman, et ux.  
Case Number: 95-274-X  
3949 McDonogh Road

The proposed use of the existing home as a medical office and the remaining portion as a residence has the potential of generating approximately 40 trips per day. The existing house used only as a residence would be expected to generate approximately ten trips per day.

The parking layout on the site is extremely substandard. The 13-foot width adjacent to the house limits the area to simply a stacking of cars in the driveway with no way of getting the first vehicle out without backing out those vehicles behind it. It would appear that a total of four vehicles could be placed on the property if the first two in can be blocked with side-by-side vehicles near the sidewalk. Given that four people could be working on the site at a given time (doctor, housekeeper, receptionist, and technician) this obviously sets up a situation where employees and/or patients will be parallel parking on-street. It also means that a moderate volume of traffic will be backing out of the driveway onto McDonogh Road. While backing out of driveways is a common occurrence in residential areas, it is not particularly desirable on a road like McDonogh Road. This road is classified as a minor arterial roadway with an average traffic volume of over 10,000 per day and a speed limit of 30 m.p.h. The two-block section of McDonogh Road from Winands Road to Lumo Circle (northern intersection), which contains the subject site, has the highest traffic volume south of Winands Road because both McDonogh Road and Brenbrook Drive traffic flows together and meets just south of the subject property. A higher than normal level of parking activity (backing into the road, stopping traffic flow to parallel park) would be undesirable. Patients and employees who park on-street will likely park in front of others' homes and also would at times parallel park on the other side of the street. This would generate very undesirable mid-block crossings of pedestrians and expose them to an unnecessary risk of being struck as compared to office sites where appropriate accommodations are made to contain the entire parking arrangements on-site.

SEW/GMJ/lvd

cc: David A. Green  
Jeffrey Long

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration &  
Development Management

FROM: Pat Keller, Director  
Office of Planning and Zoning

DATE: February 22, 1995

SUBJECT: 3949 McDonogh Rd.

INFORMATION:

Item Number: 272 95-274-X  
Petitioner: Schlottman Property  
Property Size: 6409 sq. ft.  
Zoning: DR-5.5  
Requested Action: Special Exception  
Hearing Date: / /

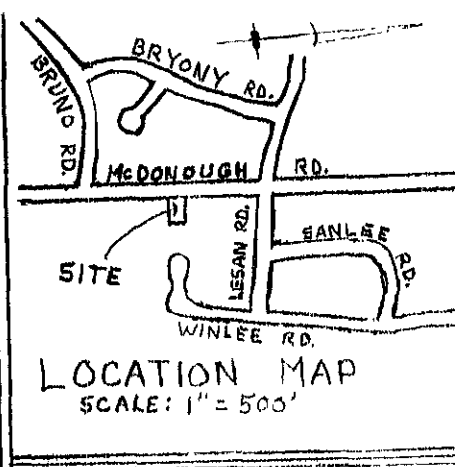
SUMMARY OF RECOMMENDATIONS:

The plan accompanying the special exception is incomplete and provides no useful information from which to review issues related to the provision of parking, screening and landscaping.

These issues aside, however, staff notes the site is situated in the middle of the community of Century 21 at Randallstown, along McDonogh Road which is improved with well maintained, single-family detached dwellings on both sides of the street.

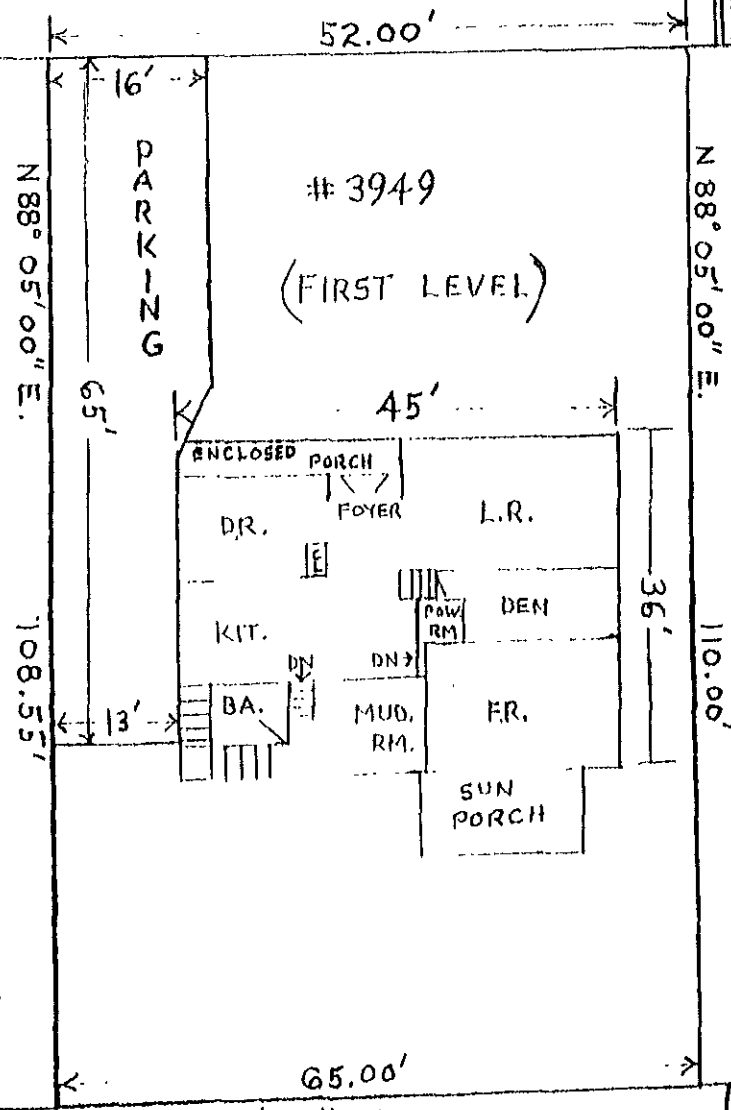
The property is located in a neighborhood designated as a Community Conservation Area in the 1989-2000 Master Plan. Relative to this request the Plan indicates, "Proposals encouraging extra traffic harmful to the community should be avoided." Generally, the introduction of non-residential traffic into an existing community results in a negative impact. However, due to the lack of information contained within this filing, it is impossible to determine possible trip generation from this site.

McDONOUGH ROAD



# 3947  
SCALE OF DRAWING: 1" = 20'

LOT 1



# 3949

(FIRST LEVEL)

# 3951

LOT 3

*Ref. No 1*

65.00'  
N 01° 55' 00" W.

LOT 19

95-274-X

SPECIAL EXCEPTION PLAN

LOT 18

272

ADDRESS: 3949 McDONOUGH RD.  
SUBDIVISION NAME: PLAT # 2,  
CENTURY 21 AT RANDALLSTOWN  
PLAT BOOK # 36  
FOLIO # 5  
LOT # 2  
SECTION # 6  
OWNER: RICHARD AND  
PATRICIA SCHLOTTMAN

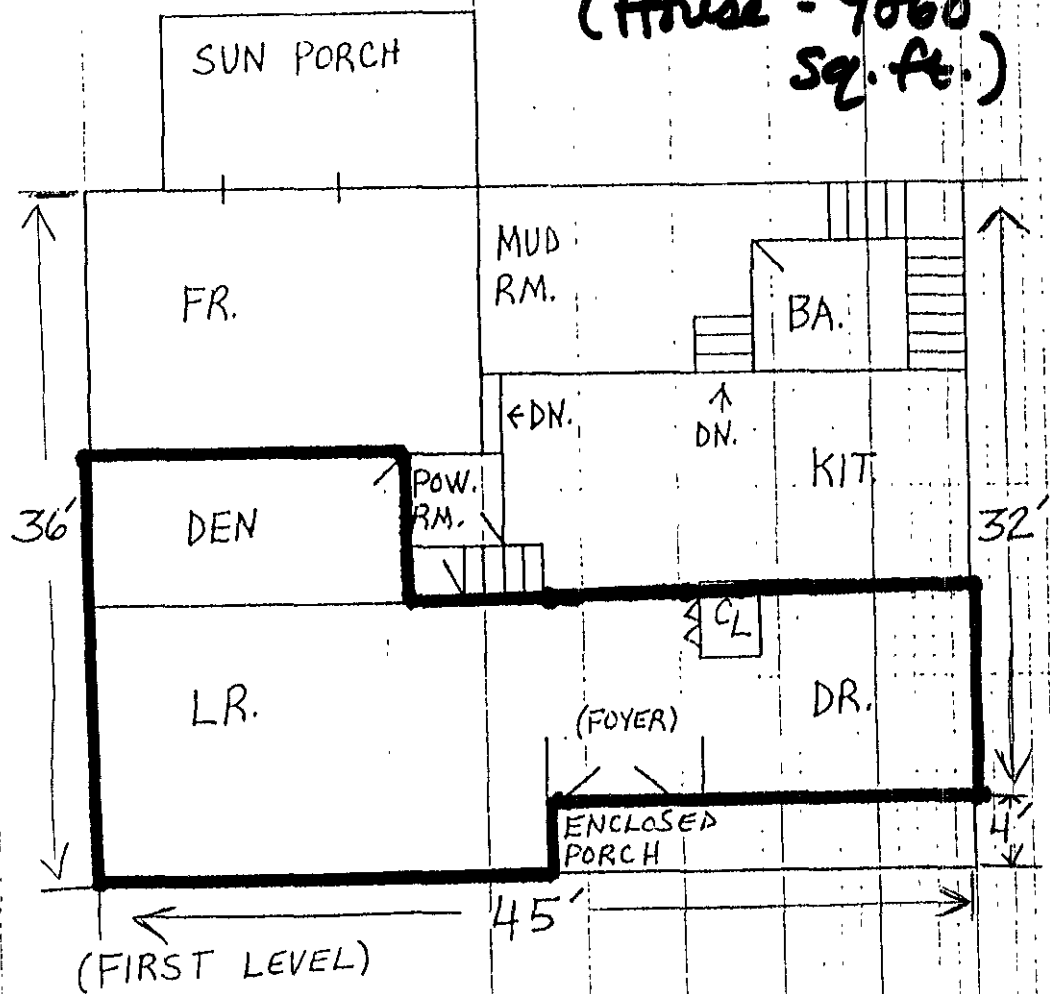
LOCATION INFORMATION  
ELECTION DISTRICT: 2<sup>ND</sup>  
COUNCILMANIC DISTRICT: 2  
1" = 200' SCALE MAP#: NW 8-I  
ZONING: DR 5.5  
LOT SIZE: 6,409 sq. ft., APPROX.  
SEWER: PUBLIC  
WATER: PUBLIC

# Dimensions of Office

Ref  
Nor

Apx. 630 square  
feet

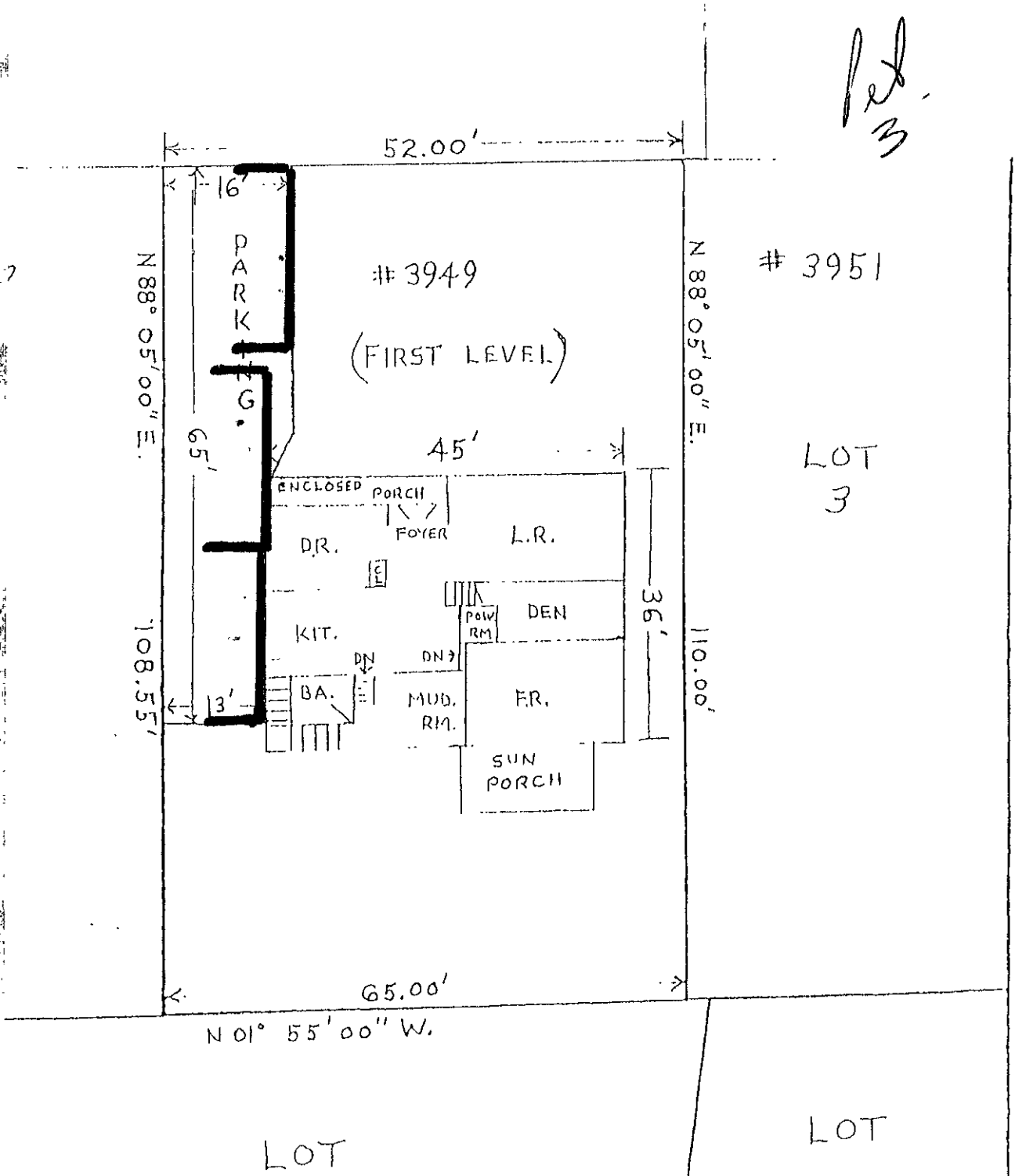
(House - 4860  
sq. ft.)





McDONOUGH ROAD

Plat.  
3



Pet 3

Cert Exh # 3

MAY LING DER RUSSELL  
3935 BRENBROOK DRIVE  
RANDALLSTOWN, MARYLAND 21133

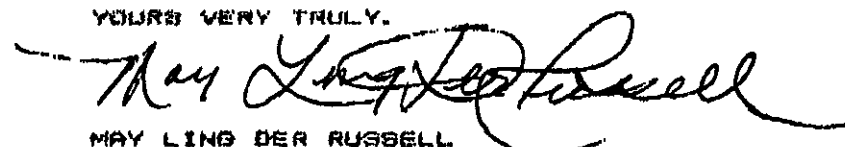
APRIL 20, 1990

TO WHOM THIS MAY CONCERN:

I AM WRITING ON BEHALF OF MY 91 YEAR OLD MOTHER, SHEW DEN, WHO RESIDES AT 3947 MC DONOUGH ROAD, RANDALLSTOWN, MD. SHE IS THE IMMEDIATE NEIGHBOR OF DR. RICHARD SCHLUTIMAN AND SHARES THE ADJOINING DRIVEWAY. SINCE I RESIDE ON THE OPPOSITE SIDE OF MY MOTHER AND SHE DOES NOT OPERATE A MOTOR VEHICLE, WE HAVE GIVEN THE DOCTOR FULL PRIVILEGES OF HER DRIVEWAY DURING HIS OFFICE HOURS.

SHOULD YOU HAVE ANY FURTHER QUESTIONS, YOU MAY REACH ME AT THE ABOVE ADDRESS OR I MAY BE REACHED AT (410) 484-1313 DURING THE HOURS OF 10:00 A.M. - 5:00 P.M. MONDAY THRU FRIDAY OR (410) 655-2093 IN THE EVENINGS.

YOURS VERY TRULY.

  
MAY LING DER RUSSELL

*But. Exh #4*

IN RE: PETITION FOR SPECIAL EXCEPTION \* BEFORE THE  
S/S Padonia Road, 628.17' E of \* ZONING COMMISSIONER  
the c/l of Eastridge Road \*  
(115 E. Padonia Road) \* OF BALTIMORE COUNTY  
8th Election District \*  
4th Councilmanic District \* Case No. 94-413-X  
Nelson A. Wright, Jr., et ux \*  
Petitioners \*

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception for that property known as 115 East Padonia Road located in the Cockeysville area of northern Baltimore County. The Petition was filed by the owners of the property, Nelson A. Wright, Jr. and his wife, Janet Wright, and the Contract Purchasers, James and Sandra Kassolis. The Petitioners seek approval of a dental office within the dwelling on the subject property, pursuant to Section 1801.1.C.9(b) of the Baltimore County Zoning Regulations (B.C.Z.R.). The property and area designated for the special exception use are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing held for this case were Nelson and Janet Wright, property owners, James and Sandra Kassolis, Contract Purchasers, David Billingsley, Land Planning Consultant, and Newton A. Williams, Esquire, attorney for the Petitioners. There were no Protestants present.

The uncontradicted testimony and evidence presented revealed that the subject property consists of 0.2296 acres, more or less, zoned D.R. 3.5 and is improved with a single family dwelling. The property is located in Timonium, not far from York Road, in the residential subdivision known as Coachford, a community of well-kept single family homes. Dr. Wright

testified that he is a Dentist by profession and has owned the subject property since 1971. He testified that approximately two years after his acquisition of the property, he converted a portion of the lower level of the dwelling to a dental office which he has maintained since that time. As shown on the site plan marked as Petitioner's Exhibit 1, that portion of the dwelling devoted to the dental practice includes the office, a laboratory, a waiting room and examining room, and a small bathroom, all of which comprise approximately 23.9% of the total square footage of the dwelling. Dr. Wright testified that he is a General Practitioner by trade and has office hours four days a week, during which he usually sees 7 to 10 patients per day.

Dr. Wright testified that he is now desirous of reducing his working hours and the scale and volume of his dental practice. In this regard, he anticipates relocating the practice to an office building in Timonium. Moreover, he and Mrs. Wright will be moving to the Loveton Farms community. Under these circumstances, the house has been listed for sale and a contract has been entered into between the Petitioners and James Kassolis and his wife, Sandra. Like Dr. Wright, Dr. Kassolis is a dentist by profession, and is desirous of continuing the current use of the subject property to support his dental practice. Thus, the Petition for Special Exception was filed.

Dr. Kassolis testified that he is a Periodontist and has been in practice for approximately 21 years. He stated that the office layout of the subject dwelling will be maintained as it currently exists. That is, 767 sq.ft. of the dwelling will be devoted to office use. This comprises 23.9% of the total 3,210 sq.ft. associated with the subject dwelling, which is within the 25% limit set forth in the B.C.Z.R. for such a special

exception use. Dr. Kassolis anticipates having office hours four days per week, Monday through Thursday, from 8AM to no later than 7PM. Presently, he envisions having two non-professional assistants in his practice. In that his practice is more specialized, he anticipates only seeing two patients per hour, which will be scheduled by appointment.

Testimony was also received from David Billingsley, the consultant who assisted in the preparation of the site plan. Mr. Billingsley indicated that he field-measured the area of the dental office and confirmed that it comprises 23.9% of the total square footage of the dwelling. He also described certain improvements that will be made to the property to support Dr. Kassolis' practice. Although the interior office will remain the same, additional parking is to be provided. Specifically, the driveway will be extended along the east side of the subject site towards the rear of the property. Moreover, additional plantings and landscaping are anticipated to be placed along that property line. The additional parking is intended to prevent on-street parking by patients of Dr. Kassolis and to avoid the necessity of requesting a parking variance.

It is clear that the B.C.Z.R. permits the use proposed in a D.R. 3.5 zone by special exception. It is, equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest.

The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception should be granted.

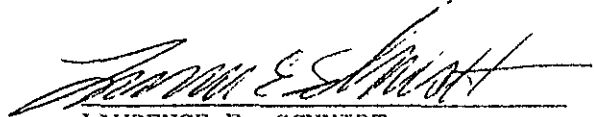
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 6th day of June, 1994 that the Petition for Special Exception for a home dental office on the subject property, pursuant to Section 1B01.1.C.9(b) of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

- 2) The special exception relief granted herein is limited to the use of that area depicted on Petition-

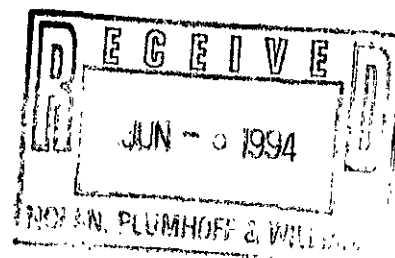
er's Exhibit 1 as comprising 23.9% of the total square footage of the subject dwelling. Furthermore, there shall be no more than two non-professional assistants associated with Dr. Kassolis' dental practice.

3) When applying for any permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs





Pet No 5

To Baltimore County Zoning Board

I support Dr. Schlottman's request to the Zoning Board to be approved for a part-time medical practice.

Sincerely,

Keith Horton

ADDRESS:

3936 Mc Donogh Rd  
Randallstown, Md 21133

Date: 2/20/95

To Baltimore County Zoning Board

I, a neighbor of Dr. Schlottman, support Dr. Schlottman's request to the Zoning Board to be approved for a part-time medical practice.

Sincerely,

Carlene M. Barksdale

ADDRESS:

3942 McDonogh Rd.

Randallstown, Md. 21133

Date: 2/20/95


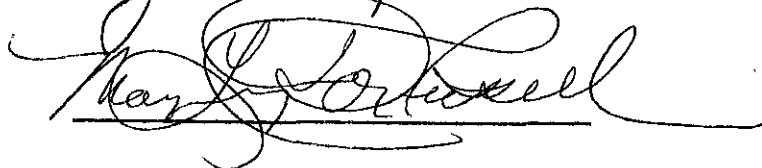
Rel No 5

128 No 5

To Baltimore County Zoning Board

We, neighbors of Dr. Schlottman, support Dr. Schlottman's request to the Zoning Board to be approved for a part-time medical practice.

Sincerely,

ADDRESS:

3935 Brentwood Dr.  
Randallstown, Md. 21133

Date: 2/20/95

# Northwest Community Assn. Inc.

BOX 7522

BALTIMORE, MD

21207

FEB 21, 1995

Baltimore County Government  
Office of Zoning and Development Management  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

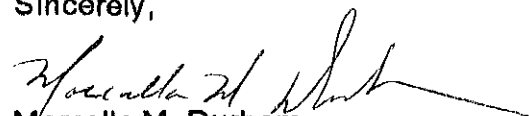
To whom it may concern;

The continuous shift of the medical profession to specialization, has left a void in the ranks of family practitioners and the desire among those remaining to establish offices in high rise medical centers has created an insurmountable problem among the elderly and disabled residents of our community. added to this dilemma is the fact that doctors visits to the home are a thing of the past

To ease the burden to these residents who compose a large proportion of our community population, we have requested a number of doctors and physical therapists who reside in the area to open part time facilities in their residence. Among the few responding is Dr. Richard H. Schlottman who lives at 3949 McDonogh Rd. in Baltimore County. We feel that Dr. Schlottman in complying with our project will be performing a much needed community service.

We therefore respectfully request that he be given the necessary zoning variances to permit him to provide this benevolent service.

Sincerely,

  
Marcella M. Durham  
Chairperson  
Health & Safety committee

APPROVED

 pres.

*Per No 6*



A, Looking East at the Schlottman Residence -  
3949 McDough Road.



B, View of same looking NE

Request of Richard Schlottman  
for Special Exception for a part time  
home medical office 1-3949 McDough Rd.

Case No. 95-274-X

City of GA - 2-I



C, View of 2 driveways available for patient parking



5

D. Available parking - ~~3947~~ on left, 3947 on right



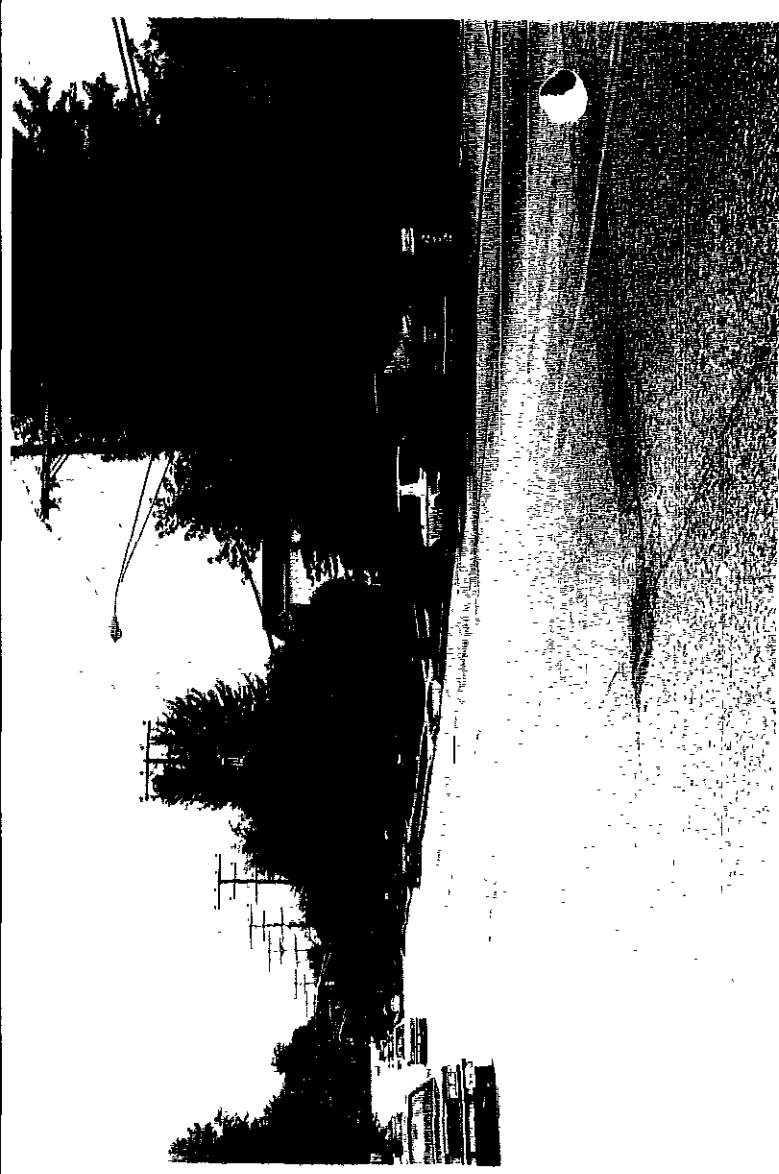
*E., Looking South on McDonough Road, 3949 between  
two poles on left.*



*F., Looking Northeast at 3947 and 3949 McDonough Rd.*



C. Looking north on McDonough Rd. from Bunker Rd.



H. Looking north on McDonough Rd. 39th St. on right.





I. Two views of home dental office on McDonough Rd.



J. Note sign and parking area.



WMA  
10/1/74



WBP

exception. He lives close by to Ms. Hyatt, and has been a resident of the area for 23 years. His concerns were relative to family members visiting his house due to patient's parking in the front of his house and traffic on McDonogh Road; also the "U" turn problem and the residential character of the community.

Mr. Stephen Weber, Division of Traffic Engineering, testified to traffic in the area. Mr. Weber was accepted as an expert in traffic engineering with no opposition. He testified that McDonogh Road was a minor arterial roadway and that McDonogh Road was a cross-country roadway with a relatively high volume of traffic, and that it was not desirable to have traffic backing out into the street from any driveway. On cross-examination, Mr. Weber testified that traffic had generally peaked on McDonogh Road by 9:00 a.m., but that between 6:00 p.m. and 7:00 p.m., traffic was still relatively heavy.

Mr. David Green also testified on behalf of Baltimore County. He is involved in Community Planning for this Councilmanic district. He testified that he was familiar with the area, and, as the community conservation spokesperson, the requested usage was not conducive to the residential nature of the area due to traffic flow and the efforts made to keep the area purely residential. He did not want to set a precedent that would begin any type of commercial corridor in the area.

Having heard arguments and testimony and reviewing exhibits, the Board finds that the special exception should be granted subject to conditions being imposed by the Board. Under the 1955

adverse effects was made plain in *Schultz*. 291 Md. at 21-22, 432 A.2d 1319. We are not aware, however, of any place in an ordinance, statute, or the record of the case *sub judice* where the legislative body that decided to allow certain uses as permitted uses and other uses only by the grant of a special exception has catalogued which inherent adverse effects associated with a particular use it considered in resolving the tug of war between "beneficial purposes" and "possible adverse effect." *Id.*, 291 Md. at 21, 432 A.2d 1319. Thus, absent such a foundation, whether the presumption that the abstract special exception use is in the interest of the general welfare is rebutted must be addressed by the zoning body to which the legislative body has delegated that responsibility on a case-by-case basis.

[2, 3] In any case-by-case analysis, the zoning body may, in the application of its expertise, recognize effects of a proposed use that it considers common to that use regardless of where it may be located in the applicable zone(s). In the instant case, we are not prepared to say that the Board's Decision and Order incorrectly interprets the holding of *Schultz*. As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind and degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical by virtue of where Glenair is actually located. This does not reflect an erroneous understanding of *Schultz*; no matter how unartfully the Board framed the language of the decision.

The Board had before it substantial evidence to support its finding that potential dangers from airplane crashes were such a remote possibility as not to constitute an adverse effect to

the owners of vicinal properties. The Board specifically made reference to statistical information compiled by the FAA and AOPA and the restrictions imposed or undertaken in the noise control plan as approved.

We have demonstrated earlier the fairly debatable nature of the evidence before the Board concerning any adverse impact upon property values.

The Board's findings as to impacts on vicinal properties due to noise from either Glenair's operations directly or the opposition's "attractive nuisance" theory regarding non-Glenair aircraft also were within the realm of the fairly debatable based on the evidence before it.

The Board in the instant case was correct to treat noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County. It indicated that the legislative body must have also foreseen such a potential when it determined to allow such uses with the grant of a special exception in the same zone that allowed as permitted uses single family homes on minimum three acre lots. It was also well within the realm of the fairly debatable, based on this record, for the Board to have resolved that the actual noise generated by Glenair's operations did not rise to the level of adverse effects beyond those inherent in such an airfield located anywhere in the R-District. The Board had before it actual noise measurements (apparently considered pursuant to § 10-911, Md. Courts & Judicial Proceedings Code) from which comparisons to objective, regulatory standards could be made. It also had before it objective conditions and limitations in the noise control plan, some volunteered by the applicants and some imposed by the Board. The noise control plan, as we noted earlier, was prepared in accordance with regulations promulgated by the MAA. As required, the plan mapped on adjacent properties what the perceived noise levels would be from the projected operation of Glenair. The prescribed methodology took into account, among other things, distance and topography. The results indicated that noise

Based upon a review of the information provided and analysis conducted, the staff recommends that the applicant's request be denied for the following reasons:

- the use could tend to destabilize the community
- the use could encourage other similar conversions in the community
- the applicant has not indicated how the impact of this use on adjacent property will be mitigated.

Prepared by: \_\_\_\_\_

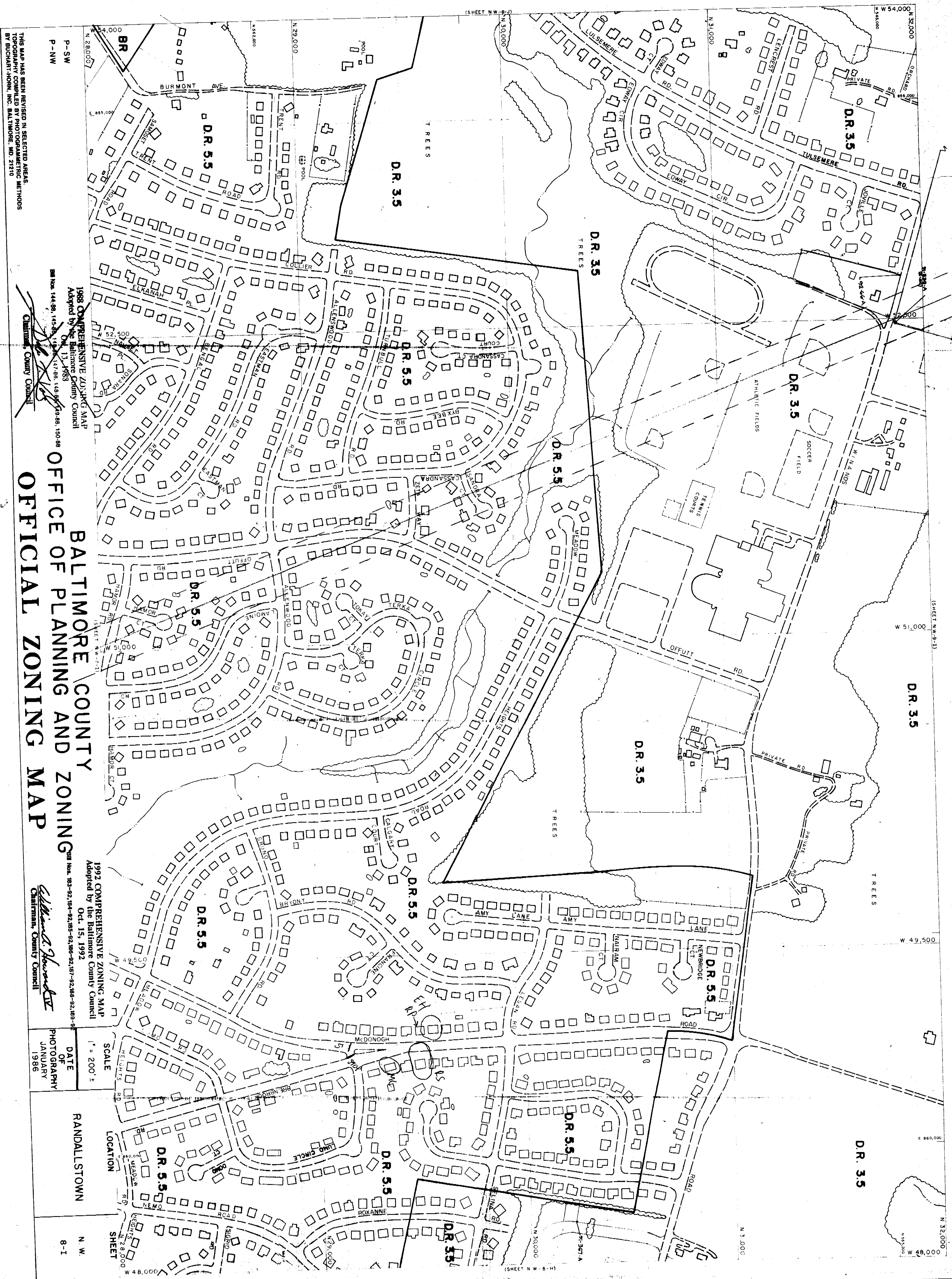
*Jeffrey W. Long*

Division Chief: \_\_\_\_\_

*Gary L. Kerns*

PK/JL





THIS MAP HAS BEEN REVISED IN SELECTED AREAS  
TOPOGRAPHY COMPILED BY THE BALTIMORE COUNTY  
BY BUCHART-HORN, INC., BALTIMORE, MD. 21210

P-SW  
P-NW

1988 COMPREHENSIVE ZONING MAP  
Adopted by the Baltimore County Council  
Oct. 11, 1988  
BMC Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88

# BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP  
Adopted by the Baltimore County Council  
Oct. 15, 1992  
BMC Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92

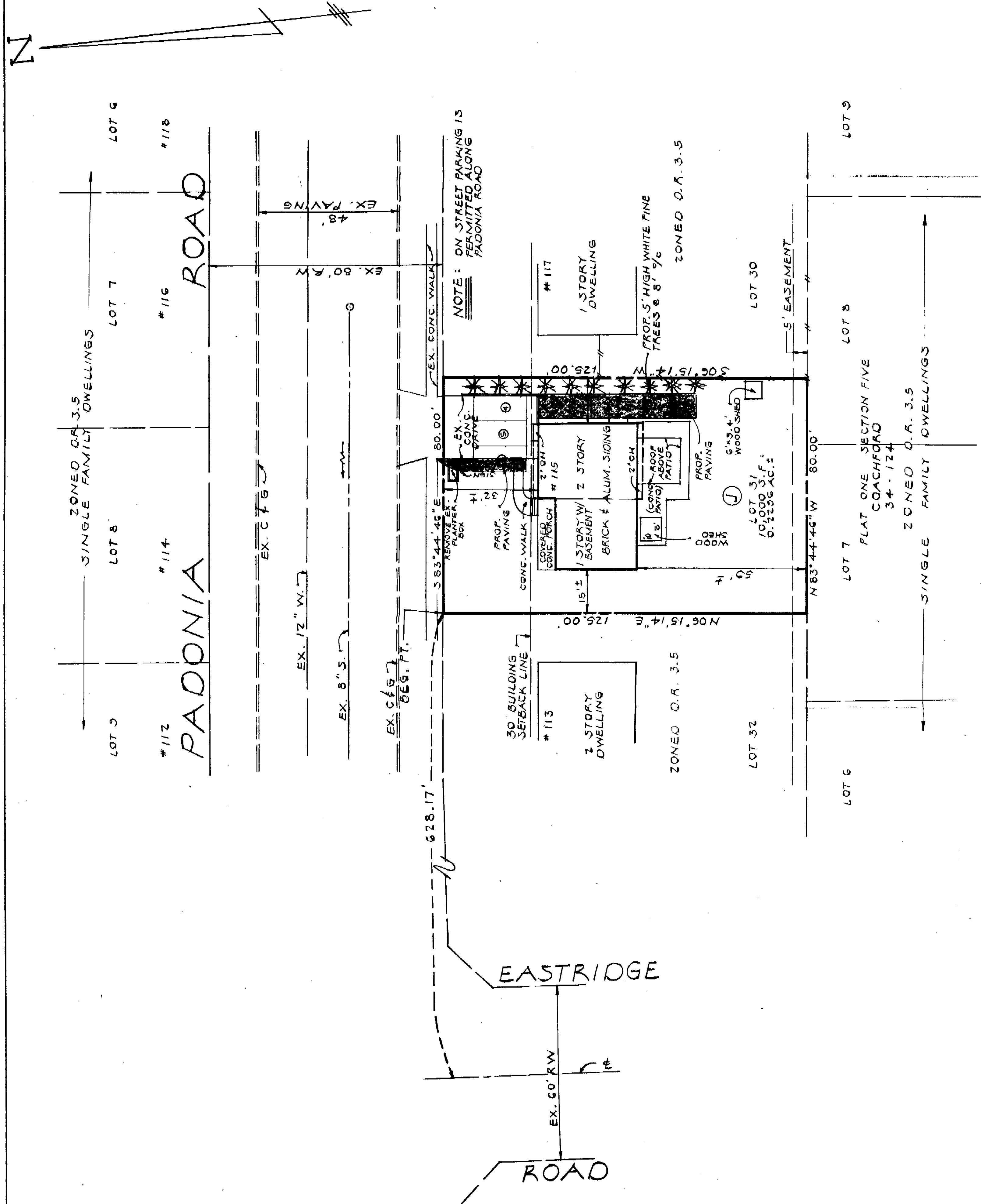
*William H. Hovatter*  
Chairman, County Council

SCALE	1" = 200'
DATE OF PHOTOGRAPHY	JANUARY 1986
LOCATION	RANDALLSTOWN
SHEET	N. W. 8-1

PC 613



1. ZONING = D.R. 3.5
2. AREA OF LOT = 10,000 S.F. = 0.2296 AC.
3. EXISTING AND PROPOSED USE - SINGLE FAMILY RESIDENCE AND DENTISTS OFFICE
4. GROSS FLOOR AREA = 3210 SQ. FT.  
AREA PERMITTED FOR DENTISTS OFFICE = 3210 SQ. FT. X 25 % = 802 SQ. FT.  
AREA PROPOSED FOR DENTISTS OFFICE = 767 SQ. FT. = 23.9 % OF GROSS FLOOR AREA
5. PARKING REQUIREMENTS:  
RESIDENTS.....2 SPACES  
DENTISTS OFFICE - 767 SQ. FT. @ 4.5 SPACES PER 1000 SQ. FT.....4 SPACES  
TOTAL NO. OF SPACES REQUIRED.....6 SPACES  
TOTAL NO. OF SPACES PROVIDED.....6 SPACES
6. MAXIMUM NUMBER OF EMPLOYEES PERMITTED = 4 (1 RESIDENT PROFESSIONAL, 1 NON-RESIDENT PROFESSIONAL ASSOCIATE AND 2 OTHER NON-STUDIAL EMPLOYEES)



USE	OFFICE	RESIDENCE	TOTAL
BASEMENT	250 S.F.	455 S.F.	705 S.F.
LOWER LEVEL	517 S.F.	333 S.F.	850 S.F.
FIRST FLOOR	—	705 S.F.	705 S.F.
UPPER LEVEL	—	950 S.F.	905 S.F.
TOTAL	767 S.F.	2443 S.F.	3210 S.F.

FLOOR PLANS  
SCALE: 1"=10'

CASE # 94-413-X

PLAT TO ACCOMPANY APPLICATION  
FOR SPECIAL EXCEPTION  
115 E. PADONIA ROAD  
LOT 31, BLOCK J, PLAT 1, SECTION 3  
COACHFORD P.B. 31, F. 135  
ELECTION DISTRICT 8, C3  
BALTIMORE COUNTY, MARYLAND  
SCALE: 1" = 20' APRIL 13, 1934  
MAY 26, 1934

CENTRAL DRAFTING & DESIGN, INC.  
601 CHARWOOD COURT  
EDGEWOOD, MD. 21040  
(410) 679-8719

ADD PAYING TO ACCOMMODATE 6 PARKING SPACES, ADD SCREENING	DATE
	5-26-94

C. O. & D. JOB NO. 9410